



New Mexico Division of Vocational Rehabilitation

# Manual of Operating Procedures

Revision 2024

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## **1. DVR Overview**

### **1.1 Agency Philosophy**

The Division of Vocational Rehabilitation (DVR) is a program that offers unique services to individuals with a disability to assist them in achieving competitive integrated employment. The DVR is committed to providing high-quality and culturally sensitive services to all eligible New Mexicans, including typically underserved populations, such as individuals in rural communities, tribal members, veterans, and those with a significant disability or multiple disabilities. The DVR is further committed to working collaboratively with Native American 121 Vocational Rehabilitation Programs to ensure that the needs of New Mexico's Native American population are met.

Vocational Rehabilitation (VR) services are provided with a focus on employment and with an emphasis on high-quality services. Counseling and guidance are the primary services, with an emphasis on a partnership between the participant and the VR counselor, as well as on establishing competitive integrated partnerships with workforce development systems, community resources, tribal entities, and employers. To serve as many individuals as possible, the DVR service-delivery system also emphasizes using its resources efficiently.

#### ***1.1.1 Focus on Competitive Integrated Employment***

The primary focus of the Division of Vocational Rehabilitation (DVR) is to assist individuals with a disability in achieving a competitive integrated employment outcome. Individuals with a disability are faced with barriers and obstacles unique to their particular situation. The DVR's role is to assist the participant in addressing and reducing barriers related to employment.

The DVR is an eligibility-based program, which distinguishes it from entitlement programs. To qualify for services, participants must meet the eligibility criteria. All services are provided on an individualized basis to participants who meet the eligibility criteria. Services are also provided to support determining eligibility or to support a vocationally related activity. For example, ancillary services, such as physical or psychological restoration, may be provided to enable participation in a vocational program.

Services will not be provided for reasons other than determining eligibility or supporting a vocational program. Diagnostic evaluations, for example, can only be provided to aid in determining eligibility or ineligibility. Diagnostic evaluations cannot be provided just to determine a diagnosis or find out about a medical or psychological condition unless the purpose is specifically to obtain information for determining eligibility or to develop an Individualized Plan for Employment (IPE). Once a participant

is deemed to be eligible, any service provided must be related to achieving the employment goal as outlined in the IPE.

### **1.1.2 High-Quality Service Delivery**

The best measures of quality are participant satisfaction, appropriate service delivery, and the acquisition and retention of competitive integrated employment by the participant as evidenced by appropriate case documentation. In all phases of service delivery, participants are considered the primary customer of DVR services. As such, they are to be treated with dignity and respect at all times. This applies even in instances in which an impasse may occur between the VR counselor (or another rehabilitation service team member) and the participant. The DVR has mechanisms for resolving an impasse, including program manager reviews, informal supervisory reviews, mediation, and fair hearings with an impartial hearing officer. If these avenues are pursued, the participant should continue to receive services in a timely manner, as appropriate. There should also be no repercussions. In short, the VR service-delivery team should maintain a high level of professionalism at all times.

High-quality service delivery also means the delivery of services in a timely manner from the outset of the referral to and application to the DVR. Agency counselors will determine eligibility as soon as possible not to exceed 60 days (unless exceptional and unforeseen circumstances beyond the control of the DVR warrant an extension of that time that is agreed to in writing by the participant). However, efforts should be made to expedite determining eligibility in a timely manner. Ongoing involvement by the participant and/or the participant's representative is necessary to facilitate delivering services in a timely manner.

The DVR utilizes a case management database to streamline and capture essential case information. As such, the VRC will review all open cases quarterly to align with the RSA-911 report. Although case reviews are conducted on a quarterly basis, case reviews may be conducted more frequently based on the participant's needs. During quarterly case reviews, the VRC will collaborate with the other rehabilitation team members to review the completion status of the identified services in the IPE and validate and update the following:

- Outcome status
- Accuracy of Educational goals.
- Accuracy of all measurable skills gains.
- Accuracy of open authorizations to ensure alignment with current case status.

Additionally, staff must adhere to validation documentation requirements, update data pages as appropriate, and enter case notes encompassing case activity.

### **1.1.3 Vocational-Rehabilitation Counseling and Guidance: A Central Service**

The most important service that the DVR provides is vocational-rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with 34 C.F.R. § 361.52. This is necessary to document that informed choice was exercised as an essential component of the VR process, and it provides the forum for the VR counselor and other members of the rehabilitation team to communicate agency policies, expectations, and employment and career options, as well as to discuss an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. The counseling and guidance provided by the DVR also serve to identify the client's goals.

Vocational-rehabilitation counseling and guidance are services that are necessary throughout the VR service-delivery process. It is important to establish a counseling relationship with the client early on to foster a collaborative relationship. This begins at the time of the initial interview with the counselor or rehabilitation technician. Clear expectations should be established, and planning should begin. Initially, the focus is on obtaining information to determine eligibility.

The vocational-rehabilitation counseling and guidance relationship provides a mechanism for outlining the eligibility criteria that will be used to make a determination. Before determining that an individual with a disability is unable to benefit from VR services in an employment outcome because of the severity of that individual's disability or that the individual is ineligible for VR services, the VR counselor must explore the applicant's abilities, capabilities, and capacity to perform in realistic work situations. Vocational-rehabilitation counseling and guidance will be important and necessary services for those individuals for whom VR counselors need to develop a written plan and provide Trial Work Experiences (TWEs).

Employment planning should begin immediately to emphasize what the overall intended outcomes of DVR services will be. These include determining whether the individual is eligible for VR services and whether the VR services are necessary to address the VR needs of eligible individual applicants, consistent with each individual's IPE. By focusing on the employment outcome described in the IPE and the services and supports needed to achieve the specific employment goal, the counselor and participant can work towards the participant's employment goal.

Ongoing vocational-rehabilitation counseling and guidance are critical to the success of the VR program, including processing applications, planning TWEs, determining eligibility, developing the IPE, and providing VR and supported employment services, as well as post-employment services during an open case. This service provided by the DVR should focus on the goal of having the client achieve a competitive integrated employment outcome. While some programs require less of an interactive role (such as when the participant is attending school), quarterly vocational-rehabilitation counseling and guidance must take place to ensure that each participant is making suitable progress in the program and that any obstacles that may arise are being addressed. For more immediate interactive activities, such as a job search and

placement, intensive counseling and guidance are necessary to ensure suitable placement and job retention. When job-retention services, such as job-coaching services, are provided in supported employment or other related programs, counselors should play an active and integral role in facilitating service delivery, even when Community Rehabilitation Providers (CRPs) or Workforce Development System (WDS) providers are providing the direct job-coaching services. Periodic visits to the job site, frequent visits with the participant or the participant's representative, and interaction with the provider (in addition to reviewing progress reports) are necessary to guide the process and to ensure that a suitable vocational adjustment takes place.

#### ***1.1.4 Partnership between the Participant and the VR Counselor***

A key factor to the success of a participant in achieving an employment outcome is his or her relationship with the VR counselor. Participation by both in all aspects of the service-delivery process is necessary to create a productive partnership. From the participant's perspective, this involves making informed choices throughout his or her participation in the VR program. Achieving a successful outcome also requires the participant to commit to achieving one. This involves the participant's becoming independent and self-sufficient to the greatest extent possible. The counselor's role is to facilitate decision-making and informed choice, to provide thorough information about policies and procedures, to assist in outlining vocational options, to provide information about available resources and vendors, and to provide vocational expertise. Effective communication is essential to the success of the partnership. To facilitate effective case management and meet the DVR's responsibilities, the counselor must use a mode of communication best suited for the participant.

A successful partnership involves a shared commitment and mutual respect. Both parties should be committed to achieving a suitable competitive integrated employment outcome. The participant should be treated with respect, as should the counselor and the rehabilitation team. While members of the rehabilitation team must maintain a high level of professionalism, participants are also expected to conduct themselves in a respectful manner. Some disabling conditions can lead to behavioral issues that create challenges for interpersonal communication and collaboration. However, to the extent possible, participants are expected to treat their relationship with VR staff as a partnership. In instances in which blatant abuse of DVR staff is evident and disability factors have been taken into consideration (including those within and beyond the participant's control), staff can require a corrective course of action on the participant's part. The corrective course of action will be included as part of the IPE. For example, this could mean participation in therapy or related services. If the behavior is not corrected or if DVR staff members are clearly endangered, case closure is considered an appropriate course of action. *For case closure to take place, there must be clear evidence and documentation of the events leading up to the action and evidence of appropriate action to address behavioral problems.*



In instances in which the behavior is beyond the participant's control, collaboration with other service-delivery professionals should take place to evaluate the appropriateness of employment and to develop strategies for behavior management. In either instance, consideration must be given to the fact that the participant will ultimately be interacting with an employer, coworkers, and possibly customers. It may be appropriate to close the case based on the participant's inability or unwillingness to correct behaviors that hinder or prevent progress and ultimately employment in a competitive integrated work setting.

### ***1.1.5 Partnership with Community Resources and Employers***

Part of the role of the DVR counselor and service-delivery team is to forge partnerships with other community resources, including Workforce Development Systems (WDS) partners and employers. By developing community resources, the DVR service-delivery team creates avenues for participants to access other needed resources. Developing community resources also facilitates outreach activities to recruit more participants. In an era of shrinking resources, it is important to maximize the use of outside resources to the greatest extent possible. More importantly, collaboration with outside resources serves to benefit DVR participants. Obtaining and maintaining employment are important aspects of the participant's life. Frequently, other services are needed to improve the chances of reaching a suitable employment outcome.

The DVR is mandated under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), to partner with various other entities, including one-stop centers, to streamline service delivery and avoid duplication of services. Other partners include school systems (to improve and expand VR services to students with a disability), Community Rehabilitation Providers (CRPs) as partners in the job placement of persons with a disability, and the medical community. The DVR service-delivery team has specialized expertise in assisting persons with a disability in achieving an employment outcome, and, as such, the DVR should be marketed as a viable community resource.

Employers are the most important resource for DVR counselors. Without employers, successful employment outcomes cannot be achieved. DVR service-delivery team members should always remain aware of the need to maintain a positive relationship with employers. This entails being sensitive to employer needs and satisfaction, maintaining a visible and positive image in the community, and acting as a resource. Participating in community activities, participating in business networks, conducting and/or participating in job fairs, participating in marketing activities, working cooperatively with other agencies geared towards job placement, and focusing on job-development activities all serve in this capacity. Providing expertise or assisting in identifying resources for Americans with Disabilities Act issues, such as job accommodations, should also be considered as a service for employers. In essence, employers are considered to be the DVR's second customer. Recognizing employer

needs and considering employers as partners can only serve to enhance the DVR's emphasis on assisting participants with achieving employment outcomes.

### **1.1.6 Efficient Use of Resources**

The New Mexico DVR program is committed to providing high-quality services and to serving as many eligible participants as possible. To do this, service delivery staff must maintain a focus on using financial resources efficiently. Tools to assist with this are the use of comparable benefits and the Participant Financial Contribution (see Section 16). Negotiation with participants is also recommended to ensure that costs of services are shared to the extent possible.

Negotiation with service providers must also take place. This does not imply that participants should not receive necessary services or that they should not have a choice in the types of services or the vendors of their choice. It does imply, however, that staff should use the most cost-effective means of service delivery whenever possible and when it does not impede any specific service needs of the participant.

When providing counseling and guidance, as well as assisting with the development of an IPE, participants should also be provided only with those services that are necessary for determining eligibility or identifying the VR needs of the participant to achieve an employment outcome.

## **1.2 Informed Participant Choice**

Informed choice refers to an ongoing process in which the individual with a disability and the counselor collaborate to gather and evaluate information that will be used by the individual to make informed choices about goals and services that will lead to a competitive integrated employment outcome. It is the Vocational-Rehabilitation (VR) counselor's responsibility to serve as a facilitator, using his or her skills and knowledge of the process of vocational rehabilitation to contribute to this partnership. The individual requesting the services brings his or her experiences with the implications of the disability and the knowledge of his or her strengths, abilities, and interests.

### **1.2.1 Policy Statement**

Each applicant and recipient of services must be informed through appropriate modes of communication about the opportunities to exercise informed choice throughout the VR process, including the availability of support services for individuals with a cognitive impairment or others who require assistance in exercising informed choice. Assistance, if requested, desired, or needed, must be provided to applicants and recipients of services in exercising informed choice in making decisions related to providing assessment services. Assistance must also be provided to applicants in acquiring information that enables them to exercise informed choice in developing their

IPEs with respect to the selection of the employment outcome or the projected post-school employment outcome for students and youth with a disability. This includes selecting VR services, timelines, service providers, and the employment setting, as well as the settings in which services will be provided and methods for procuring services.

The process of informed choice calls for cultivating a partnership between the applicants and recipients of services, or, as appropriate, the participant's representative, and the VR counselor. This partnership promotes a vested interest and involvement in the application, eligibility, IPE, and employment processes.

### **1.2.2 Requirements**

While implementing informed choice, the participant and (if applicable) his or her representative are encouraged to take the lead in making choices about the VR services received and the choice of the employment goal. The VR counselor assists the participant during the assessment process to discover the participant's strengths, resources, priorities, concerns, abilities, capabilities, and interests. It is the VR counselor's responsibility to inform the participant about available options for developing the IPE, for exercising informed choice, and for assuring that the individual understands the options. The participant must participate in choosing the employment goal. The counselor acts as a resource in facilitating this process by outlining options, interpreting agency policies, and educating and informing participants of available resources. Once an IPE has been signed by both the participant and the VR counselor, the participant assumes the responsibilities identified in the IPE for implementing the decisions and achieving the employment outcome. The counselor provides guidance and monitors progress to assist in this process. The individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice are critical factors in the employment plan, in addition to the labor market and the individual's willingness to relocate in search of employment. Cost is not a determining factor in establishing an employment goal or the services related to that goal; however, cost-efficient strategies must be used. These strategies must be consistent with comparable benefits and services requirements, as well as the Participant Financial Contribution.

The participant or participant's representative must be provided with information necessary to make an informed choice about specific vocational-rehabilitation services, including the providers of those services that are needed to achieve the individual's desired employment outcome. This information must include, at a minimum, information relating to:

- cost, accessibility, and duration of potential services;
- qualifications of potential service providers, as available and appropriate;
- types of services offered by the potential providers;
- the degree to which services are provided in integrated settings; and
- outcomes achieved by participants working with service providers, to the extent that such information is available.

In providing or assisting the individual or the individual's representative in acquiring this information, the following methods or sources of information may be used:

- lists of services and service providers;
- periodic participant-satisfaction surveys and reports;
- referrals to other entities (with permission and a signed release form), disability groups, or disability advisory councils qualified to discuss the services or service providers;
- relevant accreditation, certification, or other information relating to the qualifications of service providers; or
- opportunities for individuals to visit or experience various work and service-provider settings.

In instances in which an applicant with a cognitive or some other disability requires assistance in exercising informed choice, the VR counselor must describe the support services available to facilitate informed choice through methods that can be adequately understood by the applicant. Such support services include:

- assessing the level of the disability need to effectively communicate and/or acquire other assistance;
- providing interpreter services as necessary throughout the VR process;
- providing guidance and technical assistance to the extent necessary to convey information about informed choices throughout the VR process;
- providing the applicant's representative, if appropriate, and/or guardian with information necessary to make an informed choice about the specific vocational-rehabilitation services to be provided;
- providing information to other service-delivery staff, such as Community Rehabilitation Provider (CRP) staff, case managers, education officials, advocates, and other interested parties or professionals as appropriate to facilitate informed decision-making;
- simplifying information for persons with a cognitive impairment;
- using multiple modes of communication and repetition (e.g., audiotapes) as appropriate; and
- scheduling a longer time period for meetings when appropriate

### **1.2.3 Procurement Methods**

To be fully engaged in the VR process, the individual must gather and use information to the greatest extent possible, participate in planning and problem solving, make and implement decisions, and seek or identify needed resources. The counselor works with the individual to build relationships and to align resources that will enable the individual to exercise informed choice and work toward the desired employment outcome. Such activity includes:

- providing a listing of available vendors for particular services,
- assisting participants by working with new service providers to become recognized State vendors,
- providing a description of the State Procurement Code requirements as they apply to the DVR and the participant when selecting goods or services,
- informing the participant and/or representative of expected time frames for procuring goods or services,
- providing a description of what constitutes comparable benefits as related to specific services,
- processing authorizations and payments in as timely a manner as possible, and
- informing the participant of the requirement to have an authorization in place prior to providing services.

### **1.2.4 Guidelines**

**1.2.4.1 Exercising Informed Choice.** Exercising informed choice and taking more responsibility in the VR process make demands on individuals with a disability and may also make demands on other people in their lives. The participant is encouraged to take a lead role in selecting the employment goal, services necessary to achieve the goal, service providers, timelines, and procurement methods. The effective implementation of informed choice depends on working jointly with the VR counselor. The VR counselor brings to the partnership knowledge of rehabilitation and the VR process, an understanding of informed choice, information regarding rehabilitation resources and current labor-market trends, and the experience of assisting other individuals through the VR process.

The participant brings to the partnership information on the implications of the disability and on his or her strengths, values, resources, priorities, concerns, abilities, and capabilities. The participant is responsible for following through with services agreed upon and is a partner in seeking out comparable benefits and services. For example, the participant is responsible for researching available financial aid and applying for financial aid when entering into or participating in a training program when he/she has the ability to do so.

**1.2.4.2 The IPE Process.** IPEs must be developed as soon as possible after but no longer than 90 days from the date of determining eligibility and prior to a student's leaving the school system (34 C. F. R. § 361.45 (e)). During the IPE process, the participant and/or the representative have the option of initiating the process by selecting the employment goal, services, timelines, and vendors. The counselor guides the process, and the client, the client's representative, if applicable, and the VR counselor must sign and date the IPE. The VR counselor and the DVR management team, when applicable, are responsible for approving and initiating the IPE. (See Section 3 for more details on the IPE process).

As part of the process of selecting an employment goal or projected post-school employment outcome for students and youth with a disability, the counselor should conduct a thorough assessment of the requested goal. This requires case development and exploration. It does not necessarily require an immediate approval or denial of any requests.

As part of the process of selecting the employment goal or projected post-school employment outcome for students and youth with a disability, the participant should be assisted with options that will provide the same opportunities as those available to persons who do not have a disability. Such options should be sufficient and of a nature that would enable the participant to compete for employment opportunities with anyone else.

Another factor in facilitating informed choice that should be considered is the participant's potential for maximizing the opportunity to obtain meaningful employment, which is not necessarily the same as premium employment. The counselor must work with the participant to assess the factors related to strengths, resources, priorities, concerns, abilities, and capabilities. This assessment must evaluate the participant's ability to achieve meaningful employment with transferable skills, training, retraining, or advanced training.

When the participant lacks the necessary skills and background to enter employment that is clearly consistent with abilities and aptitudes and would not result in underemployment, then support for training or advanced training would not be appropriate. This means that a request for a specific type of training, such as attendance at graduate school, requires a thorough assessment to determine the appropriateness of the request. In some instances, such training may be appropriate; however, requests of this nature do not have to be honored automatically and may require managerial review and approval.

If the assessment reveals that the participant can achieve his or her employment goal without the receipt of advanced training, then the counselor and client would need to discuss the services that are necessary to achieve the client's employment goal. Specific to this example and on a case-by-case basis, the denial of service or training request (e.g., advanced training) may be appropriate if it is not necessary for an individual to achieve his or her employment goal.

### **1.3 The Vocational-Rehabilitation Process**

#### **1.3.1 Legal Basis**

The legal authority for VR programs rests on the Rehabilitation Act of 1973, as amended, 29 U.S.C.A. (29 U.S.C. 701 et seq), 34 C.F.R. parts 361 through 397 Section 22-14-7 at seq., NMSA 1978.

#### **1.3.2 Nondiscrimination**

The New Mexico State Board of Education, Department of Education, Division of Vocational Rehabilitation (DVR) does not discriminate with regard to duration of residence, race, culture, ancestry, color, national origin, sex, age, religion, or disability in its programs or hiring practices.

### ***1.3.3 Status Overview***

The VR process is a goal-oriented sequence of services provided on an individualized basis to assist participants with a disability in achieving an employment outcome, consistent with the individual's unique strengths resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The rehabilitation process is broken down into "Participant Statuses," which are listed below, along with identifying possible services available to participants while in the particular status (see Table 1 and Table 2 on the following pages).

Status	Description	Possible Service
Students with a Disability	Pre-employment-transition services.	<p>Job-exploration counseling</p> <p>Work-based learning experiences</p> <p>Counseling on opportunities for enrollment in comprehensive transition or postsecondary education program at Institutions of Higher Education (IHEs)</p> <p>Workplace-readiness training</p> <p>Instruction in self-advocacy</p>
Students with a Disability	Coordinated Activities.	<p>Attending individualized education program meetings for students with disabilities, when invited;</p> <p>Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;</p> <p>Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services;</p> <p>When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);</p>



Applicant	Receipt of signed application.	Intake, diagnostics, and evaluation necessary to make an eligibility determination
Trial Work Experiences (TWEs)	Completion of Trial Work Experience (TWE) Plan prior to any determination that an individual with a disability is unable to benefit from VR services in terms of employment due to the severity of the individual's disability.	Evaluation within realistic work settings with proper supports of a sufficient variety and over a sufficient period of time. Potential for additional diagnostics.
Eligible	Determination of eligibility for VR program.	Comprehensive diagnostics and assessments for determining eligibility and priority for services.
Delayed	Assigned to an Order of Selection (OOS) priority category and placed on a waiting list due to a closed OOS category.	Information and referral. Depending on the length of time an individual is assigned to a closed priority category, he or she may contact the DVR more than once for information and referral.
Service	IPE written and approved.	Assessments for determining rehabilitation needs, joint planning towards IPE development, and the provision of VR services identified in the IPE.
Employed Post-Employment Services	Participant secures competitive integrated employment outcome.	VR services that are necessary to maintain, regain, or advance in employment, limited in scope and duration, that must be identified in an IPE, provided after placement and prior to case closure.

**Table 2**

Closed—Rehabilitated	Case closure following an appropriate period of time, but not less than 90 days, to ensure the stability of the successful employment.	
Closed—Other Than Rehabilitated	Case closure following a decision that participant is ineligible or is unable or opts not to reach an employment outcome.	

### 1.3.4 Case Status Movement

Below is a table that indicates to which statuses a participant may be moved from the current status, if appropriate action or documentation has preceded the status change (see Table 3, which appears on the following page).

**Table 3**

#### *Case Status Movement*

Status	May Be Moved To	Client Data System Data Pages
	Applicant	Intake, Education, Disability
Applicant	Eligible TWE Closed—Ineligible Closed—Other Than Rehabilitated	Eligibility Determination TWE Plan Closure Personal Information, Application, Application Documentation, Disability Browse, Special Programs
Eligible	Service Delayed (OOS) Closed—Other Than Rehabilitated	Plan Browse Closure
Delayed (Closed OOS Priority Category)	Service Closed—Other Than Rehabilitated	Plan Browse Closure

Status	May Be Moved To	Client Data System Data Pages
	Applicant	Intake, Education, Disability
Service	Employed Closed—Other Than Rehabilitated	Employment Browse Closure
Employed	Closed—Rehabilitated Closed—Other Than Rehabilitated  Supported Employment Achieved	Closure Closure
Closed— Rehabilitated	PES Closure	Closure Closure
Closed—Other Than Rehabilitated	Closure	Closure

## 1.4 Definitions

### 1.4.1

All students with a disability who satisfy the definition of a “student with a disability” (34 C.F.R. § 361.5(c)(51)), regardless of whether they have applied for or have been determined to be eligible for a VR program are.

### 1.4.2 Applicant

An applicant is an individual who has completed and signed an application for vocational-rehabilitation services or has otherwise requested services from the DVR.

### 1.4.3 Application Status

“Application status” refers to the stage within the vocational-rehabilitation process in which the individual has applied for VR services and is awaiting a determination of eligibility. This status is based on the date the individual signs the application or verbally expresses the intention to apply for services.

### 1.4.4 Appropriate Mode of Communication

The “appropriate mode of communication” refers to the specialized forms of aid and support that enable an individual with a disability to comprehend and respond to the information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open-captioned and closed-captioned videos, specialized telecommunications services and audio recordings, brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

#### **1.4.5 Client Data System**

The Client Data System (also referred to herein as the Case-Management System) is the automated system used by DVR staff for managing and storing data on participants.

#### **1.4.6 Service Status**

“Service status” refers to the stage within the vocational-rehabilitation process in which the participant has signed an approved IPE and is actively engaged in service(s) aimed at achieving the employment goal identified in the IPE.

#### **1.4.7 Clear and Convincing Evidence**

“Clear and convincing evidence” means a high degree of certainty that an individual applicant is incapable of benefiting from services in an employment outcome. Clear means unequivocal: free from obscurity or ambiguity. Generally, existing information will not provide clear and convincing evidence that an employment outcome is not achievable. In addition to Trial Work Experiences (TWEs) in competitive integrated-employment settings, clear and convincing evidence might also include:

- a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual’s vocational needs due to the severity of the individual’s disability. In addition, the involvement of the participant in in-house assessments—testing, homework assignments, and participation in relevant group activities—may assist in making such a determination.
- if appropriate, a functional assessment of skill-development activities with any necessary supports (including assistive technology) in competitive integrated-employment settings.

#### **1.4.8 Closed—Other Than Rehabilitated**

“Closed—Other Than Rehabilitated” refers to a stage within the vocational-rehabilitation process in which the participant has:

- applied for VR services but the case was closed prior to an eligibility determination;
- was determined eligible for VR services but the case was closed prior to developing an IPE; or
- received services through an approved IPE but the case was closed without the applicant’s achieving an employment outcome.

#### **1.4.9 Closed—Successfully Rehabilitated**

“Closed—Successfully Rehabilitated” refers to a stage within the vocational-rehabilitation process in which the participant received services through an approved

IPE, reached his or her employment goal, achieved stability on the job, and maintained employment for an appropriate period of time not less than 90 days.

#### ***1.4.10 Comparable Services and Benefits***

The term “comparable services and benefits” refers to services and benefits that are provided or paid for, in whole or in part, by other federal, State, or local public agencies, by health insurance, or by employee benefits that are available to the individual at the time needed to ensure the progress of achieving the employment outcome identified in the IPE and that are commensurate to the services that the individual would otherwise receive from the DVR. Comparable benefits do not include awards and scholarships based on merit. Exempt services include:

- assessments for determining eligibility and VR needs;
- counseling and guidance, including information and support services to assist an individual in exercising informed choice;
- referral and other services to secure needed services from other agencies;
- rehabilitation technology, including telecommunications, sensory, and other technological aids and devices (34 C.F.R. 361.53(b));
- job-related services, including job-search and placement assistance, job-retention services, follow-up services, and follow-along services; and
- post-employment services.

#### ***1.4.11 Competitive Integrated Employment***

The term “competitive integrated employment” refers to work in the competitive labor market that is performed on a full-time or part-time basis, including self-employment, for which an individual is compensated at or above the federal, State, or local minimum wage, whichever is higher, but is not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. In the case of an individual who is self-employed, this work yields an income that is comparable to the income received by other individuals who are not individuals with a disability and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills. Competitive integrated employment means that the worker is eligible for the level of benefits provided to other employees and that the work is at a location where the employee interacts with other persons who are not individuals with a disability (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with a disability and who are in comparable positions interact with other persons. This work, as appropriate, present opportunities for advancement that are similar to those for other employees who are not individuals with a disability and who have similar positions (Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9).

#### ***1.4.12 Community Rehabilitation Programs (CRPs)***

Community Rehabilitation Programs (CRPs) offer a range of employment-related and support services to vocational-rehabilitation participants. CRPs may include a vendor that has a formal agreement with the Division of Vocational Rehabilitation (DVR) in providing services (34 CFR 361.5(c) (7)).

#### ***1.4.13 Customized Employment***

“Customized employment” refers to competitive integrated employment for an individual with a significant disability that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability. Customized employment is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer. It is carried out through flexible strategies, such as job exploration by the individual or working with an employer to facilitate placement, including customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review); determining a job location; gaining representation by a professional chosen by the individual or self-representation by the individual in working with an employer to facilitate placement; and providing services and supports at the job location.

#### ***1.4.14 Eligible Status***

“Eligible status” within the vocational-rehabilitation process means that the participant has been deemed eligible for VR services by a qualified VR counselor and is in the process of developing an IPE. Eligibility must be determined within 60 days from the date of applying.

#### ***1.4.15 Employed Status***

“Employed status” within the vocational-rehabilitation process indicates that the participant has reached the employment goal identified in the IPE following receipt of VR services.

#### ***1.4.16 Employment Outcomes***

The term “employment outcomes” indicates full-time or part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in a competitive integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

#### ***1.4.17 Extended Services***

The term “extended services” refers to ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in employment that are provided by a State of New Mexico agency, a private nonprofit organization, or an employer. The term may also refer to any other appropriate resource from funds other than funds received by the DVR after an individual has made the transition from support provided by the DVR. Extended services are also referred to as long-term support services. For youth (ages 14 to 24) with the most significant disabilities, extended services may be provided for this population by the DVR for a period not to exceed four years or until the youth turns 25 years of age, whichever occurs first.

#### ***1.4.18 Extreme Medical Risk***

The term “extreme medical risk” indicates a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

#### ***1.4.19 Fair Hearing***

A fair hearing is a formal procedure that occurs as part of the appeal process. In a fair hearing, an impartial hearing officer is appointed to render a determination on disputed issues between the participant and the DVR based on evidence submitted by the participant and the DVR.

#### ***1.4.20 Fair Labor Standards Act (FLSA)***

The Fair Labor Standards Act (FLSA) establishes the minimum wage, overtime pay, recordkeeping, and child-labor standards that affect full-time and part-time workers in the private sector and in federal, state, and local governments.

#### ***1.4.21 Family Education Rights and Privacy Act (FERPA)***

The Family Education Rights and Privacy Act (FERPA) is a federal privacy law that gives parents certain protections with regard to their children’s educational records, such as report cards, transcripts, disciplinary records, special-education records, contact and family information, and class schedules.

#### ***1.4.22 Family Member***

For the purposes of receiving vocational-rehabilitation services, the term “family member” means an individual who is a relative or guardian of an applicant or eligible participant, someone who lives in the same household as the applicant, or someone who has a substantial interest in the well-being of the applicant whose receipt of

vocational-rehabilitation services is necessary to enable the applicant or participant to achieve a satisfactory employment outcome.

#### ***1.4.23 Free Application for Federal Student Aid (FAFSA)***

The Free Application for Federal Student Aid (FAFSA) is a form that can be prepared annually by current and prospective college students (undergraduate and graduate) in the United States to determine their eligibility for student financial aid.

#### ***1.4.24 Functional Limitations***

Functional limitations are imposed by an impairment that impedes or limits an individual in one or more areas of physical or mental functioning.

#### ***1.4.25 Individuals with Disabilities Education Act (IDEA)***

The Individuals with Disabilities Education Act (IDEA) is a federal law that makes available a free appropriate public education to eligible children with a disability throughout the nation and ensures those children access to special education and related services.

#### ***1.4.26 Individual Education Plan (IEP)***

The Individual Education Plan (IEP) is an Individualized plan developed by public-school systems for special-education students. The IEP identifies the educational goals, objectives, and services to be provided to the student. When a student reaches age 14, an IEP should also include a transition plan that addresses services and supports focused towards post-school outcomes.

#### ***1.4.27 Individualized Plan for Employment (IPE)***

The Individualized Plan for Employment (IPE) is a written instrument used to identify, coordinate, and implement the participant's employment goal, services and vendors, responsibilities, time frames, and costs. It also includes the entity or entities that will provide the VR services, settings, and methods available for procuring services, as well as a description of the criteria that will be used to evaluate progress toward achieving the employment outcome (34 C.F.R. 361.46(a)).

#### ***1.4.28 Individual with a Disability***

An individual with a disability is a person who has a physical or mental impairment that results in a substantial impediment to employment and who can benefit in employment outcome from receiving VR services.

#### ***1.4.29 Individual with a Most Significant Disability***



An individual with a most significant disability is a person who has a severe physical or mental impairment that:

- impedes the individual's functional capacities in three or more areas (such as mobility, communication, self-care, self-direction, interpersonal skills, cognitive abilities, and work tolerance or related factors) that affect employment outcome; and
- whose vocational rehabilitation can be expected to require multiple vocational-rehabilitation services over an extended period of time to result in a satisfactory employment outcome.

#### ***1.4.30 Individual with a Significant Disability***

An individual with a significant disability is a person who has a severe physical or mental impairment that:

- seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) that affect employment outcome; and
- whose vocational rehabilitation can be expected to require multiple vocational-rehabilitation services over an extended period of time.

#### ***1.4.31 Individual's Representative***

The individual's representative is anyone chosen by an applicant or participant, as appropriate, including a parent, a guardian, another family member, or an advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative. If a representative has not been appointed as a guardian or other legal representative, an applicant or a participant must sign a release of information that names the representative so that confidential information may be shared with that representative.

#### ***1.4.32 Integrated Setting***

With respect to the provision of services, an integrated setting is typically found in the community in which applicants or participants interact with nondisabled individuals other than nondisabled individuals who are providing rehabilitation services. With respect to an employment outcome, an integrated setting is typically found in the community in which applicants or participants interact with nondisabled individuals who are providing services to those applicants or participants to the same extent that nondisabled individuals in comparable positions interact with other persons. An integrated setting is typically found in the community. In that setting, the employee with a disability interacts for the purpose of performing the duties of the job position with other employees within the particular work unit and the entire work site. In this setting, the employee with a disability performs the same work performed by other persons (e.g., customers and vendors) who are not individuals with a disability (not including

supervisory personnel or individuals who are providing services to such an employee) to the same extent that employees who are not individuals with a disability and who are in comparable positions interact with these persons.

#### ***1.4.33 Local Workforce Development Board***

A local Workforce Development Board (WDB) is defined in section 3 of the Workforce Innovation and Opportunity Act (WIOA). Local WDBs are part of the Public Workforce System, a network of federal, state, and local offices that support economic expansion and develop the talent of the nation's workforce. State and local WDBs serve as connectors between the United States Department of Labor and local American job centers that deliver services to workers and employers. The WDB's role is to develop regional strategic plans and set funding priorities (see 20 CFR 679.320).

#### ***1.4.34 Maintenance***

Maintenance is monetary support provided to an individual for expenses, such as food and shelter, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational-rehabilitation needs or the individual's receipt of vocational-rehabilitation services under an IPE.

#### ***1.4.35 Mediation***

Mediation is the process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing Informal Supervisory Review or other legal remedies.

#### ***1.4.36 Personal-Assistance Services***

Personal-assistance services cover a variety of services provided by one or more persons designed to assist an individual with a disability to perform daily-living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and the ability to perform everyday activities on or off the job. The services must be necessary to achieve an employment outcome and may be provided only while the individual is receiving other vocational-rehabilitation services. The services may include training in managing, supervising, and directing personal-assistance services.

#### ***1.4.37 Post-Employment Services***

Post-employment services are vocational-rehabilitation services that are limited in nature and scope, provided under an IPE subsequent to job placement, that are necessary for an individual to maintain, regain, or advance in employment, consistent

with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

#### ***1.4.38 Pre-employment-Transition Services***

Pre-employment-transition services may be provided and coordinated by DVR counselors or in collaboration with the local educational agencies involved. These services may be purchased by the DVR through another entity and provided to students with a disability who are eligible for these services in and out of the school setting.

Required activities include:

- job-exploration counseling;
- work-based learning experiences, which may include in-school or after-school opportunities or experience outside the traditional school setting (including internships) provided in an integrated environment in the community to the maximum extent possible;
- counseling on opportunities for enrolling in comprehensive transition or postsecondary educational programs at institutions of higher education;
- workplace-readiness training to develop social skills and independent living; and
- instruction in self-advocacy.

#### ***1.4.39 Pre-employment Transition Coordination Activities***

Pre-employment transition coordination activities include:

- attending Individualized Education Program (IPE) meetings for students with a disability when invited;
- working with the local WDBs, one-stop centers, and employers to develop work opportunities for students with a disability, including internships, summer employment, other employment opportunities available throughout the school year, and apprenticeships;
- working with schools, including those that carry out activities under section 614(d) of the Individuals with Disabilities Education Act (IDEA), to coordinate and ensure the provision of pre-employment-transition services; and
- attending, when invited, person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

#### ***1.4.40 Authorized Activities***

Authorized activities if funds remain after the 15% set-aside for pre-employment-transition services and core pre-employment-transition services have been offered to all students with a disability. The Designated State Unit (DSU) may submit a formal process to move into authorized activities. These activities include:

- implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

- developing and improving strategies for individuals with an intellectual disability and individuals with a significant disability to live independently, participate in postsecondary education experiences, and advance in, obtain, and retain competitive integrated employment;
- providing instruction to vocational-rehabilitation counselors, school-transition personnel, and other persons who support students with a disability;
- disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;
- coordinating activities with transition services provided by Local Educational Agencies (LEAs) under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);
- applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel to better achieve the goals of this section;
- developing model transition demonstration projects;
- establishing or supporting multistate or regional partnerships involving states, local educational agencies, DSUs, developmental-disabilities agencies, private businesses, or other participants; and
- disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

#### ***1.4.41 Reasonable Accommodation***

Providing reasonable accommodation entails modifying or adjusting a job or the work environment to enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes making adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of nondisabled employees.

#### ***1.4.42 Reasonable Effort***

A reasonable effort means making three attempts to contact an individual through at least two modes of communication.

#### ***1.4.43 Rehabilitation Engineering***

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

#### ***1.4.44 Rehabilitation Technology***

Rehabilitation technology involves the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and to address the barriers confronted by individuals with a disability in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive-technology devices, and assistive-technology services.

#### ***1.4.45 Student with a Disability***

A student with a disability is an individual with a disability in a secondary, postsecondary, or other recognized educational program who

- is not younger than age 14,
- is not older than age 21, and
- is eligible for and is receiving special education or related services under Part B of the Individuals with Education Act (IDEA), or
- is a student who is an individual with a disability for purposes of section 504 of the Rehabilitation Act of 1973 as amended (34 C.F.R. § 361.5(c)(51)).

#### ***1.4.46 Substantial Impediment to Employment***

A substantial impediment to employment is a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

#### ***1.4.47 Substantially Limits***

In relation to the impairment, "substantially limits" means having a substantial negative consequence that is neither temporary nor easily ameliorated.

#### ***1.4.48 Supported Employment***

Supported employment means competitive integrated employment that is individualized and customized to be consistent with the strengths, abilities, interests, and informed choice of the individuals involved. It may also apply to individuals with the most significant disabilities for whom competitive integrated employment has not historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability and who, because of the nature and severity of their disability, need intensive supported employment services and extended services to perform the work involved.

#### ***1.4.49 Supported Employment Services***

Supported-employment services are ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability, including youth with a most significant disability, in employment. These services are provided singly or in combination and are organized and made available to assist a participant in achieving competitive integrated employment. These services are based on determining the needs of a participant as specified in an IPE and are provided by the DSU for a period of not more than 24 months, except that this period may be extended, if necessary, to achieve the employment outcome identified in the IPE.

#### ***1.4.50 Temporary or Easily Ameliorated***

The term “temporary or easily ameliorated” indicates a condition that is expected to last for a limited time only or to be corrected, either partially or totally, by an identified treatment with little or no residual effects on functioning. It is an impairment for which the only service needed is payment for medical services.

#### ***1.4.51 Transferable Skills***

Transferable skills are abilities with multiple applications that have been acquired through past work or life experiences. Examples may include but are not limited to interpersonal skills, communication skills, and self-management skills.

#### ***1.4.52 Transportation***

Transportation refers to travel and related expenses that are necessary to enable an applicant or participant to participate in a vocational-rehabilitation service, including expenses for training in the use of public-transportation vehicles and systems.

#### ***1.4.53 Youth with a Disability***

A youth with a disability is an individual with a disability who is not younger than age 14 and not older than 24 years of age who is neither a high school student nor someone associated with a transition program.

## **2. Referrals and Applicant Status**

### **2.1 Referral**

#### **2.1.1 Policy Statement**

The New Mexico Division of Vocational Rehabilitation (DVR) has established standards (see procedures below) for the prompt and equitable handling of referrals of individuals for vocational-rehabilitation services, including referrals made through workforce service-delivery systems. Referrals shall be tracked and monitored as appropriate to maintain adequate documentation and to ensure timely follow-up. Efforts to contact all referrals will be made in a timely and an appropriate manner, as outlined below.

#### **2.1.2 Definition of a Referral**

A referral is an individual who has been referred to the DVR by other agencies, organizations, or individuals and from whom the following information has been obtained:

- name and
- the means by which to contact the individual (address and/or phone #).

*Note.* Institutionalized referrals shall be accepted if those individuals referred are available to participate in the rehabilitation process and employment. Generally, notification of a discharge date from the institution or discharge plan that will allow for active participation by the individual shall be required.

#### **2.1.2.1 Pre-Employment Transition Services for Potentially Eligible**

- a. the individual is available for pre-employment-transition services, transition services, or VR services, and
- b. referral information indicates that the individual may be for pre-employment-transition services or may be eligible for VR services.
- c. Pre-employment Transition Consent form must be obtained providing the agency permission to provide Pre-ETS services to the student.

#### **2.1.2.2 Pre-Cases to General VR**

- a. For students with disabilities in receipt of pre-employment transition activities with established PRE case types in the case management system the process to apply for general VR services does not require an additional referral.
- b. Transition VR Counseling staff will notify assigned VR team to relay the student is ready to apply for VR services.

- c. Staff should schedule the student with a general Counselor within 48 hours of the notification to ensure the continuity of pre-employment transition services for the student.
  - o Student does not need to attend an orientation.

## **2.2 Tracking in the Client Data System**

The Client Data System referral data page allows tracking all referred individuals, including those who proceed to Status or Applicant Status.

### **2.2.1 Procedures**

- A. A referring agency or individual can submit referrals via the DVR's online referral application (<http://www.dvr.state.nm.us>). The link to the referral application is on the DVR website. Referrals will be accepted via phone, mail, email, fax, initial contact, etc.
- B. Office staff members have 48 hours to respond to the new referral. Within that period, staff will:
  - i. review referral in the Case-Management System to identify whether the individual has been referred or already has an open referral. (If the referral is a duplicate, staff will contact referral for clarification.)
  - ii. verify online referral. (This moves the data from an online referral application into the Case-Management System.)
  - iii. contact the referral within 48 hours or two business days to provide or schedule orientation and schedule intake interview.
  - iv. update referral outcome in the Case-Management System to "contact made" and then update as appropriate thereafter.

### **2.2.2 Reasonable Efforts to Contact**

Reasonable efforts to contact a referral should be made within 48 hours or two business days of receipt of the referral by telephone, letter, or personal visit. The purpose of the contact is to ascertain the individual's interest in applying for DVR services and to schedule the initial interview, if indicated. Contacts should be via the mode of communication best suited for the individual based on the available referral information as documented. For example, if there is a question about the referral's ability to understand written language fully, a phone contact or personal visit should be made.

At least two attempts to contact the referral must be made prior to closing the referral in the Case-Management System. One of these attempts must be a letter that provides at least 10 days for a response. If there is no response after two attempts to contact were received, the referral will be closed.

If the referral does not attend the scheduled intake appointment, two attempts to contact the referral will be made prior to closing the referral in the Case-Management System. One of these attempts must be a letter that provides at least 10 days for a



response. If the referral does not respond, the referral will be closed. Should the referral respond, he or she will be provided with the opportunity to reschedule the intake appointment. However, if the referral does not attend a second time, the referral will be closed immediately.

Home visits should be approached with common sense and caution. An alternative meeting location will be used whenever possible. If a visit to an individual's home is required, two staff members will make the visit and take an agency-issued communication device while on the visit.

## **2.3 Applicant Status**

### **2.3.1 Policy Statement**

The New Mexico Division of Vocational Rehabilitation (DVR) commits to a process that informs referrals for VR services of application requirements and gathers information necessary to initiate an assessment for determining eligibility in a timely and an equitable manner. All applicants are entitled to participate in the assessment for determining eligibility, even if supporting documentation is unavailable and assessment is necessary for determining eligibility.

### **2.3.2 Definition**

An applicant is an individual who has completed and signed an application for vocational-rehabilitation services, has completed a common intake application form in a one-stop center requesting VR services, or has otherwise requested vocational-rehabilitation services from the DVR. The application or request for services must be signed and dated by the individual applying for services or the applicant's legal representative. It must then be entered in the Case-Management System.

### **2.3.3 Procedures**

**2.3.3.1 Time Limitations.** The purpose of Applicant Status is to gather diagnostic information sufficient to make a determination of eligibility. Although planning activity may take place during Applicant Status, the emphasis must be on making an eligibility determination as soon as possible. The counselor must determine whether an individual is eligible for vocational-rehabilitation services as soon as possible, but no longer 60 days after the individual has submitted a signed application for services unless:

- the counselor determines, in consultation with the applicant, that exceptional and unforeseen circumstances beyond the control of the counselor preclude making an eligibility determination within 60 days and the applicant agrees to a specific extension of time by signing an Eligibility Determination Extension documented in the case-services record; or

- the counselor determines, in consultation with the applicant, that a specific extension of time is required to involve the applicant in Trial Work Experiences (TWEs) to determine whether the individual is incapable of benefiting from VR services due to the severity of his or her disability prior to determining ineligibility.

**2.3.3.2 Initial Interview.** Upon receipt of a referral, an initial interview should be scheduled within two weeks to assure referrals move to application status as soon as possible. In the event that the initial interview cannot be scheduled within this time frame, the counselor or VR staff member will document the reason for the delay and reschedule within 30 days of the receipt of the referral. A counselor or rehabilitation technician must conduct the initial interview. During this interview and in all communications with the individual, it is critical to use the mode of communication that most effectively facilitates communication. Interpreter services should be provided if identified as a need either through the referral form or through contact with the individual. During the initial interview and throughout the VR process, it is essential to assess the communication process and the individual's comprehension, to adjust the communication style, and to use interpreters or other appropriate modes of communication, as necessary. The purpose of the initial interview is to:

- exchange information with the individual;
- establish a basis for the individual–counselor relationship;
- provide a thorough review regarding the DVR's processes, procedures, and expectations; and
- start the diagnostic process needed to determine eligibility.

During the initial interview, to the extent necessary, an appraisal of the individual's current functioning in the following areas should be documented:

- medical, including reported diagnosis, functional limitations, medications, surgeries;
- social, including family and other support network;
- intellectual, including level of functioning;
- financial, including SSA benefits;
- psychological, including reported diagnosis, functional limitations, medications, hospitalizations, etc.;
- education, including levels of attainment and areas of study.
- vocational, including full work history, tasks performed, reasons for leaving jobs, transferable skills, etc.;
- independent living; and
- other issues that affect the applicant's vocational rehabilitation.

During the initial interview, the following forms should be reviewed with the individual and completed as follows:

- Application for VR services. Obtain individual and/or guardian signature as appropriate on the DVR Application for Services form if this has not yet occurred.

The individual signature date on the signed form is the application date used as the starting point for the 60-day eligibility timeline.

- Participant Rights and Responsibilities handout. Review the handout sheet with the individual and/or guardian as appropriate. Obtain signature(s) of the individual and/or guardian and provide them with a copy of the handout. A copy of the signed form must be attached in the electronic case file.
- Release-of-Information forms. While all efforts should be made to have the individual gather existing information to document the reported disability, an alternative to gathering existing records is to have the individual or guardian sign and date a release-of-information form. The release must be completed prior to obtaining the signature, with copies of the forms retained in the electronic case file.

During the initial interview, set short-term homework tasks for the individual, as appropriate given the reported impairment, to expedite the eligibility-determination process and to assess motivation. Examples would include:

- attendance at appointments with the counselor or other diagnostic appointments;
- exploration of vocational interests;
- contacting educational institutions or employers as appropriate; and
- contacting other service providers, such as workforce connection centers.

Make the individual aware of the 60-day requirement for an eligibility decision and, as appropriate, the individual's responsibilities in helping to expedite the process, including providing verification of SSDI/SSI eligibility. During this stage in the process, the counselor should emphasize and focus attention on employment-related issues, not the immediate psychosocial service needs of the individual.

**2.3.3.3 Guidelines for Assessment.** Counselor determination is a critical factor in all issues pertaining to eligibility, particularly in determining, in consultation with the applicant, the nature and scope of information necessary to determine eligibility and what assessment activities are needed that will provide such information.

The law emphasizes the use of existing information that is current, as appropriate considering the nature of the disability. The best way to determine the sufficiency of existing information is in relation to critical case questions formulated by the counselor when considering all eligibility criteria. When existing information is not sufficient, appropriate assessment activities must be undertaken that will provide the necessary additional data. When arranging for additional assessments, the counselor must review the need for such assessments.

During the assessment period, the Participant Financial Contribution does not apply, and the applicant is exempt from the determination of comparable benefits and services. Comparable services and benefits may be used voluntarily by the applicant during the assessment period. Use of these benefits or services cannot be mandated by the DVR during the assessment period.

Diagnostic assessments provided during this phase of the rehabilitation process are for the purpose of gathering data related to eligibility determination.

### **2.3.4 Scope of Diagnostic Study**

**2.3.4.1 Diagnostics for Eligibility.** Impairments must be substantiated in written form by a medical doctor, doctor of osteopathy, physician's assistant, nurse practitioner, or another professional licensed or certified in the diagnosis of the impairment, including the following:

- optometrist for eye infractions,
- certified psychologist to diagnose mental health/emotional disorders,
- audiologist for hearing impairments,
- educational diagnostician for learning disabilities or development disabilities, and
- licensed professional clinical counselor and independent social workers for mental-health diagnosis.

**2.3.4.2 Other Diagnostics.** Reports from licensed professional clinical counselors, independent social workers, and licensed substance-abuse counselors should be sought if the applicant is currently receiving treatment from this source. These reports should be considered in the overall assessment of the applicant.

If the impairment is stable and nonprogressive, existing data are generally sufficient for substantiating the impairment. Existing reports should be used whenever possible; however, when the impairment is not stabilized or is progressive, current reports should be obtained. If existing reports are not available or are insufficient, the applicant's own physician or physician of choice should be used whenever possible. Further diagnostics needed to substantiate or clarify functional limitations may be obtained, as appropriate, from individuals who are licensed or qualified according to statewide professional standards to include:

- speech, occupational, or physical therapists;
- vocational evaluators in private practice or in a facility;
- rehabilitation engineers to assess an applicant's potential to benefit from rehabilitation-engineering services;
- educational diagnosticians' reports, school transcripts, or other school records;
- licensed professional clinical counselors;
- independent social workers;
- licensed substance-abuse counselors; and
- other diagnostics that lend information regarding the individual's level of functioning.

Specialist exams should be used as described below for visual impairments:

- ophthalmologist if eye disease or pathology is known or suspected;

- optometrist for initial screening or for refraction errors.

Specialist exams should be used as described below for hearing impairments:

- otolaryngologist (ENT) if ongoing ear pathology is known or suspected;
- audiologist for hearing evaluations.

Specialist exams should be used as described below for a learning disability or a developmental disability:

- psychologist certified by the State Board of Psychological Examiners;
- clinical psychologist under the State Personnel Board;
- educational diagnostician certified by the State Department of Education;
- neuropsychologist when a learning disability is questionable.

Specialist exams should be used as described below for mental or emotional disorders:

- psychiatrist;
- psychologist certified by the state board of psychological examiners;
- clinical psychologist under the State Personnel Board;
- licensed independent social worker; or
- licensed professional clinical counselor.

**2.3.4.3 Hospitalization for Diagnostics.** If hospitalization is requested by a physician for the purpose of diagnostic study, medical and supervisory consultation shall be obtained.

### ***2.3.5 Eligibility Determination Extension***

An Eligibility Determination Extension is reserved for exceptional and unforeseen circumstances that are clearly beyond the counselor's ability to control and must be agreed to by the counselor and applicant. The reasons will usually pertain to one of the following:

- Applicant: Applicant's failure to keep appointments, failure to participate in services, unavailability, etc. In these instances, the counselor should consider case closure.
- Agency: Assessment activity has been appropriate; however, the information does not sufficiently answer case questions pertaining to eligibility, and additional time is required to generate the information.
- Documentation: Inability to obtain medical and/or psychological records in a timely manner when multiple impairments exist, or the disability or disabilities are of a complicated nature.

*Note.* Be sure to document clearly in the Case-Management System Case Notes data page what questions pertaining to eligibility need to be answered and what actions are planned to answer the questions.

When any of the above reasons exist for not being able to make an eligibility determination, explain the circumstances to the applicant, and give the option of proceeding with an Eligibility Determination Extension or having the case closed. Before seeking the specific extension of time, the counselor should review the case to see whether an eligibility determination is feasible

When counselor failure or team failure is the reason for not being able to make an eligibility determination within the allowed 60-day time frame from submission of application, explain the circumstances to the applicant, and inquire as to the applicant's willingness to proceed with an Eligibility Determination Extension. If the applicant refuses, then the counselor must proceed as rapidly as possible in overtime to make an eligibility decision. Exceeding the 60-day time frame in this manner is in violation of federal law for time in status.

Eligibility Determination Extensions must be signed by the counselor and the applicant and attached to the electronic case file. The Case-Management System requires the counselor to enter the date the extension was agreed upon with the applicant and the date the eligibility determination was extended to.

## **2.4 Trial Work Experience (TWE)**

### **2.4.1 Policy Statement**

Prior to determining that an applicant is incapable of benefiting from vocational-rehabilitation services in an employment outcome because of the severity of the disability, the counselor must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations. There must be clear and convincing evidence to support a determination of ineligibility. This is assessed through Trial Work Experiences (TWEs).

### **2.4.2 Definition**

Trial Work Experiences (TWEs) are placements within realistic work settings that allow for exploring and assessing the applicant's abilities, capabilities, and capacity to perform in work situations in the most integrated settings possible. Possible examples of TWE placements include structured volunteer work, situational work assessments with proper supports, supported employment, on-the-job training, internships, job shadowing, and other experiences that use realistic work settings. TWEs must be of sufficient variety (i.e., at least two job tasks related to a specific job) and must occur over a sufficient period of time (up to 40 hours in a week or at least the maximum amount of work that the applicant can tolerate) for the counselor to make an eligibility determination. A TWE is an exploration of the individual's abilities, capabilities, and capacity to perform in work situations that shall be assessed periodically during TWEs, including experiences in which the individual is provided appropriate supports and training.

### **2.4.3 Requirements**

Requirements are provided only to applicants with a significant disability or most significant disability in situations in which the counselor is unable to determine whether the applicant can benefit from VR services in employment outcome and is considering an ineligibility determination. The provision of Trial Work Experiences (TWEs) will enable the counselor to make such a determination. TWEs:

- must be set in the most integrated settings possible, consistent with informed choice and the rehabilitation needs of the applicant;
- must allow for appropriate supports to accommodate the rehabilitation needs of the applicant;
- shall include VR services, including support services, necessary to determine the applicant's ability to benefit from VR services in employment outcome;
- shall include, to the degree needed, an appraisal of the applicant's work behaviors and identification of services required to acquire work skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the participant.

During the TWE, the applicant is exempt from the determination of comparable benefits and services. Comparable services and benefits may be used voluntarily by the applicant, but the use of these services and benefits cannot be mandated by the DVR during the assessment period.

### **2.4.4 Procedures**

Prior to the expiration of the allowed 60 days in Applicant Status and upon determination that TWEs are required, the counselor should:

- discuss with the applicant the reasons for TWEs.
- jointly develop a plan with the participant. Within the plan, adequately describe the rationale for requiring a TWE, identify the employment setting or potential employment settings if the site has not yet been determined and the services not yet identified to assess the applicant's ability to benefit from vocational-rehabilitation services.
- apply the Participant Financial Contribution for services other than assessment services provided through the TWE plan: childcare, transportation, clothing, etc. The Participant Financial Contribution is not to be applied to services directly related to the assessment of the applicant's abilities to work (i.e., restoration services, job placement and coaching, OJT-associated costs, etc.).
- obtain necessary approval from the area program manager.

- obtain applicant's signature on the plan and initiate the provision of services as soon as possible. (Duration and frequency are determined by the counselor and applicant)

Staff members are required to review TWE plans at least monthly. The counselor should make clear what the critical case questions are pertaining to eligibility and terminate this phase of service provision as soon as it is determined that the questions have been answered. (This should be determined after the applicant has attempted to perform at least two job-related tasks for up to 40 hours, but not less than the maximum amount of work the applicant can tolerate.)

#### **2.4.5 Case Management Documentation**

The counselor must:

- establish that the applicant is significantly disabled or most significantly disabled in the Case-Management System; and
- complete a Trial Work Experience Plan that provides a description of the purpose of the plan, identifying the employment setting if identified at time of plan development and primary support services required and documenting the criteria for evaluating the applicant's progress.

As appropriate, the Trial Work Experiences Plan must be submitted to the area program manager for approval. Signatures of the counselor and the applicant or the applicant's representative, as appropriate, must be obtained. The signed TWE Plan must be attached to the electronic case file. Once all signatures are obtained, the start date may be entered into the Client Data System, and planned services can be initiated.

#### **2.4.6 Advancing from Trial Work Experience (TWE)**

**Table 4**

*Advancing from Trial Work Experience (TWE)*

<b>To Status:</b>	<b>When:</b>
Closure	<ol style="list-style-type: none"> <li>Assessments indicate by clear and convincing evidence that the applicant is unable to benefit from VR services in employment outcome and is therefore ineligible.</li> <li>Applicant requests case closure, moves, or becomes otherwise unavailable to participant in the planned TWE.</li> </ol>
Eligibility	Assessments indicate that the applicant can benefit from VR services in employment outcome and the applicant is therefore eligible. Complete the eligibility data page and begin the IPE planning process.



### **3. Eligibility Status**

#### **3.1 Policy Statement**

To determine whether an applicant is eligible for VR services and the individual's priority under an order of selection for services (if operating under an order of selection), the DVR must conduct an assessment for determining eligibility and priority for services. Considering the 60-day time requirement to determine eligibility from the date of application, the need for efficient and timely activity is critical.

There are two means by which an applicant can meet the eligibility criteria for VR services. The first is to meet the criteria related to disability, impediment to employment, and the need for VR services. The second is to meet eligibility criteria for Title II or XVI Social Security benefits.

#### **3.2 Eligibility**

##### **3.2.1 Requirements**

An individual is eligible for assistance if the individual:

- A. has undergone an assessment for determining eligibility and vocational-rehabilitation needs, if necessary, and as a result, has been determined to be an individual with a disability. An individual with a disability is defined as a person who:
  - has a physical or mental impairment that substantially limits one or more major life activities,
  - has a record of such an impairment, or
  - is regarded as having such an impairment.
- B. requires vocational rehabilitation services to prepare for, secure, retain, advance, or regain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

For an assessment of eligibility and vocational rehabilitation needs, an individual shall be presumed to benefit from an employment outcome. An applicant who has a physical or mental impairment that constitutes a substantial impediment to employment is assumed to be able to benefit from vocational rehabilitation services.

##### **3.2.2 Responsibilities**

Before determining that an applicant is unable to benefit due to the severity of the individual's disability or that the individual is ineligible for vocational rehabilitation services, the vocational rehabilitation (VR) counselor shall explore the individual's abilities, capabilities, and capacity to perform in work situations through the use of Trial Work Experiences (TWEs). Such experiences shall be of sufficient variety and shall occur over a sufficient period to determine the individual's eligibility in providing the trial experiences. The VR counselor shall allow the individual to try different employment

experiences, including supported employment and the opportunity to become employed in competitive integrated employment.

Clear and convincing evidence means a high degree of certainty that an individual is incapable of benefiting from services while pursuing an employment outcome. Clear and convincing means unequivocal: free from obscurity or ambiguity. Generally, existing information will not provide clear and convincing evidence that an employment outcome is not achievable. Clear and convincing evidence must be obtained through TWEs in the most integrated setting possible, and in addition to a TWE, may also include:

- a description of assessments, through a TWE, including situational assessments and supported employment assessments from service providers who have concluded that they would be unable to meet the individual's vocational needs due to the severity of the individual's disability. In addition, the involvement of the applicant in in-house assessments—testing, homework assignments, and participation in relevant group activities—may assist in making such a determination.
- if appropriate, a functional assessment of skill-development activities with any necessary supports (including assistive technology) in real-life settings.

### ***3.2.3 SSA Presumption of Eligibility***

An applicant is presumed eligible for VR services (34 CFR §361.42(a)(3)) and to be an individual with a significant disability if they are eligible for Social Security benefits under Title II (SSI) or Title XVI (SSDI) and the case transitioned into eligible status. Should additional information be submitted to support that the individual has a most significant disability, the counselor should assign the individual to such a category.

**3.2.3.1. Guidelines for SSA Beneficiaries: Presumption of Eligibility.** The applicant eligible for VR services based on the SSDI/SSI presumption of eligibility is automatically determined to be an individual with a significant disability. Counselor should complete the eligibility within 10 days for the purposes of presumption. The applicant may also be considered a person with a most significant disability, requiring additional justification and supporting documentation.

When an applicant reports receipt of SSDI or SSI benefits, all efforts should be made to have the participant or guardian provide an award letter or copy of benefits check to verify the receipt of benefits. If the participant is unable to produce verification of benefits, a DVR release-of-information form should be signed and submitted to the SSA or other appropriate sources.

### ***3.2.4 Guidelines for Determining Eligibility***

- A. The VR counselor is responsible for making eligibility decisions. The Counselor's judgment is a critical factor in all eligibility issues, particularly in determining the types of diagnostics necessary to determine eligibility and the best resources available for those diagnostics. Timelines, quality, and informed participant choice must all be considered relative to the acquisition of essential diagnostic services.
- B. Persons needing surgery or specific short-term medical or dental treatment are generally not eligible if the surgery is expected to correct the condition with little or no residual effects. The existence of a medical problem, regardless of the immediate or current impact, does not necessarily constitute an impediment to employment.
- C. Persons with chronic impairments that are currently in remission (e.g., multiple sclerosis or cancer) are considered to be disabled if the impairment has created functional limitations or If, without treatment, the impairment may become active again. The other eligibility criteria must still be met.
- D. Eligibility determinations are applied without regard to the duration of residency, sex, race, age, creed, color, national origin, type of disability, economic status, or the availability of comparable services and benefits.
- E. An individual must be physically present and available for services. There is no residential time or legal proof requirement, such as a driver's license or voter registration card.
- F. An individual may be served by more than one state rehabilitation agency simultaneously, provided that there is no duplication of services. The individual must sign a release of information to secure the information necessary to prevent duplication and allow for the coordination of services between the state rehabilitation agencies.
- G. Individuals who are deaf and blind may be concurrently served by the New Mexico Division of Vocational Rehabilitation (DVR) and the Commission for the Blind.
- H. American Indians may be eligible for services under the DVR program and the American Indian Vocational Rehabilitation Program (Section 121) simultaneously. Also, eligible veterans may receive vocational rehabilitation services from the Veterans Administration VR program and the DVR simultaneously. The IPE development must be coordinated with the American Indian or Veterans Administration VR programs to ensure the appropriate use of comparable benefits and nonduplication of services.
- I. Legalized aliens may be eligible for VR services based on meeting other agency requirements. The DVR is unable to provide services to individuals who are not U.S. citizens or do not have an Alien Registration Receipt Card, Form I-151 or I-1551 (commonly referred to as "Green Cards"), or an Employment Authorization Document (widely referred to as a "work permit") issued from the U.S. Immigration and Naturalization Services.
- J. Eligibility determinations must be made within a reasonable time frame, not to exceed 60 days after the individual has applied.
- K. There are only two exceptions to determining eligibility within 60 days:

- Eligibility Determination Extension in exceptional and unforeseen circumstances in writing and signed by the applicant or the applicant's representative, when appropriate, and the counselor.
  - Trial Work Experience (TWE) plan(s) prior to a determination that an individual cannot benefit from VR in employment outcome because of the severity of their disability.
- L. In general, individuals engaging in illicit drug use are excluded. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs—with the following exceptions:
- The applicant has completed a supervised drug-rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use;
  - The applicant is participating in a supervised rehabilitation program and is no longer engaging in such use of illicit drugs.

**3.2.4.1 Procedures for Determining Eligibility.** Review information related to eligibility and make a determination of whether the applicant meets DVR eligibility criteria.

Determine the level of disability if the individual is determined eligible. There are three levels of priority:

1. Not Significantly Disabled: an individual with a physical or mental condition who does not meet the criteria for either of the levels described below.
2. Significantly Disabled: an individual:
  - who has physical or mental disabilities that make the individual seriously limited in one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) that affect employment outcome; and
  - for whom vocational rehabilitation can be expected to require multiple vocational-rehabilitation services over an extended period of time.
3. Most Significantly Disabled: an individual who has a severe physical or mental impairment that:
  - impedes the individual's functional capacities in at least three areas (such as mobility, communication, self-care, self-direction, interpersonal skills, cognitive abilities, or work tolerance or related factors) that affect employment outcome; and
  - whose vocational rehabilitation can be expected to require multiple and intensive vocational-rehabilitation services over an extended period of time to result in an employment outcome.

Discuss the decision with the applicant. The applicant must understand that a favorable eligibility determination does not imply that any services requested or

discussed to date are automatically approved, but that identification of specific services will be determined during the development of the IPE.

Complete the Eligibility Determination and file a hard copy in the case file. It is essential that the counselor accurately reflect the correct diagnosis and other relevant information identified during the eligibility assessment and that the counselor maintain supporting documentation in the case file. Reported disabilities that the counselor could not substantiate through diagnostic reports should be removed from the Client Data System with an explanation in a contact note. Disability data may be updated in the system at any time. Any updated Eligibility Determinations should be printed, signed by the counselor, and placed in the case file.

### **3.2.5 Requirements for Ineligibility**

An individual is ineligible for VR services if the individual does not meet one or more of the eligibility criteria. Any of the following reasons may constitute the basis for a determination of ineligibility:

- A. No physical or mental impairment exists and is substantiated by medical, psychological, or other case data.
- B. A physical or mental impairment exists; however, the impairment does not result in a substantial impediment to employment based on the counselor's analysis of information obtained during the assessment.
- C. The counselor has demonstrated by clear and convincing evidence that the applicant cannot benefit from VR services in employment outcomes due to the severity of the applicant's disability, which is demonstrated through participation in TWEs. When an applicant has been determined incapable of benefiting from VR services, a referral must be made to a local provider of extended employment.
- D. VR services are not required for the individual to enter, return to, or maintain employment.

**3.2.5.1 Procedures for Determining Ineligibility.** Provide an opportunity for full consultation with the applicant or, as appropriate, the applicant's representative prior to determining ineligibility. The applicant may be excluded from consultation if they refuse to consult, is unavailable, or whose whereabouts are unknown. The case record must contain documentation of a reasonable effort made to afford them an opportunity for consultation before case closure. The case closure document must include the appropriate reason for the closure and the rationale for the decision.

Inform the applicant or, as appropriate, the applicant's representative in writing—supplement as necessary with other proper modes of communication consistent with the individual's informed choice. Include the reasons for the determination and information regarding the participant's rights and responsibilities.

Refer the applicant to other appropriate agencies or facilities, such as independent living centers and extended employment providers.

**3.2.5.2 Annual Review of Ineligibility Decision.** When ineligibility is based on the applicant's inability to benefit from employment outcome, the counselor must review the determination within 12 months of the date that ineligibility was declared.

The purpose of the annual review is to consider new information or changes in circumstances that may affect the determination that the applicant "cannot benefit in terms of an employment outcome." Reviews are made individually with the applicant or, as appropriate, the applicant's representative.

Continuation of annual reviews of ineligibility after the initial annual review will occur only at the request of the applicant or, as appropriate, the applicant's representative. This may occur at any time after the initial review. Conditions applicable to the initial review will apply to additional reviews.

The annual review is not required in cases in which:

- the applicant has refused services/review;
- the individual is unavailable;
- the individual's whereabouts are unknown; or
- the ineligibility decision is based on the nonexistence of a disabling condition, no substantial impediment to employment, or VR services not being required.

### ***3.2.6 Guidelines for Closure Because the Participant is Unavailable***

A distinction must be made between ineligibility and unavailability. A person is only ineligible if they fail to meet one or more of the eligibility criteria but is not necessarily ineligible if unavailable. An applicant's case cannot be closed before making an eligibility determination unless the applicant is unavailable. An applicant is unavailable if they have the following:

- died;
- moved out of state;
- not responded to reasonable efforts to contact (three attempts to contact through two modes of communication, one of which is a closure warning letter);
- been institutionalized or incarcerated or under certain circumstances rendering the individual unavailable for preliminary or thorough diagnostic studies or VR services for an indefinite or considerable period of time; or
- declines to participate in appropriate VR services designed to assess eligibility despite reasonable efforts made to the participant or, as appropriate, the participant's representative to encourage participation.

#### ***3.2.6.1 Procedures for Closure.***

- A. Indicate the reason for closure and document a rationale on the closure data page in the Case-Management System.
- B. Document three attempts to contact the participant using at least two modes of communication or, as appropriate, the participant's representative in the case file.
- C. Notify the participant of impending closure by sending a closure warning letter ten business days before closure.
- D. If the participant does not respond to attempts to contact or letters of impending closure, the case will be closed in the Case-Management System.
- E. At closure, the participant is notified in writing of case closure, if appropriate, and provided information regarding the participant's rights to appeal the decision and contact information for the client-assistance program.

### **3.3 Order of Selection**

#### **3.3.1 Purpose**

If the agency deems it necessary, due to the lack of sufficient staff or fiscal resources, to serve all participants in accordance with New Mexico's State Plan, an Order of Selection will be implemented. Each eligible individual will be assigned to the waiting list based on the priority category to which they were assigned when determining eligibility. All eligible individuals with the most significant disabilities on a waiting list will be served first before any eligible individuals with significant disabilities or disabilities on a waiting list can be served. The agency will decide which priority category(ies) will be open and funded or closed when an Order of Selection (OOS) must be implemented, starting with the first priority. Eligible individuals will be served by priority category and application date.

Even when an OOS is implemented, and priority categories are closed, any individual with an approved IPE receiving services will continue to receive services, no matter which priority category they were once assigned to when eligibility was determined.

Students who began receiving pre-employment-transition services before the assignment to a priority category will continue to receive any costs/no-costs pre-employment-transition services while assigned to a waiting list. They may not receive individualized VR services until an IPE is developed.

NMDVR will allow for support to eligible individuals in immediate need of services in order to maintain employment regardless of the priority category assigned during active order of selection. In order to assure that services are provided for the purpose of maintaining employment and not bypassing the rules of order of selection, employment verification will be obtained to assure an immediate need to prevent the individual from losing employment. Services necessary to stabilize the individual's employment must be identified and provided in an IPE.

*Note.* Refer to section 3.2.4.1 for definitions of disability priority categories.

### **3.3.2 Assignment of Priority Order**

Assign priority as follows:

**3.3.2.1 Priority Group I.** The most significantly disabled individuals who require cost and no-cost vocational-rehabilitation services.

**3.3.2.2 Priority Group II.** Significantly disabled individuals who require cost and no-cost vocational-rehabilitation services.

**3.3.2.3 Priority Group III.** Participants with nonsignificant disabilities who require cost or no-cost vocational-rehabilitation services.

### **3.3.3 Guidelines for Instituting an Order of Selection**

- A. Upon determining an applicant eligible for services, the counselor shall assign a priority code (priority group I through priority group III).
- B. The eligible individual shall be informed of their priority code and right to appeal the priority-code assignment.
- C. While the agency is operating under an Order of Selection, the counselor may only assist those students with a disability in receipt of pre-employment-transition services and individuals in those priority categories for which the agency has determined that there are sufficient resources to serve under an IPE. The DVR does not have a provision to serve eligible individuals other than those in priority categories for which there are sufficient resources.
- D. All eligible individuals who do not fit a funded category shall be placed in a holding or waitlist status.
- E. There will be a delayed status for eligible individuals interested in DVR services and waiting for a change in the Order of Selection that would allow them to be served. The case should be closed if the individual is not interested in being placed on a waiting list.
- F. If at any time the agency lifts the Order of Selection for a particular priority group, those individuals within that priority group will automatically be changed in the system, and the individual will be contacted to initiate the development of an IPE.
- G. Every six months, the agency shall inquire of the individuals in the Delayed Status category whether they are still interested in receiving VR services and whether there are changes in the individual's disability that may make them eligible for a serviceable priority code. If they are still interested in services but their disability has not changed, they will remain in delayed status.
- H. If the applicant's disability changes, the counselor shall contact the eligible individual for further assessment. Based on this information, the Order of Selection priority code may be upgraded by the counselor at any time. If the participant indicates that they are no longer interested in receiving DVR services



or is nonresponsive to inquiries (three attempts to contact through two modes of communication, one of which is a closure warning letter), the applicant's case will be closed.

- I. When an eligible individual is placed in Delayed Status, the counselor shall refer the individual to other appropriate community programs, including other components of the workforce system that are best suited to address the individual's employment needs. Referrals will be made in writing and include information and advice regarding the most suitable services to assist the individual and a specific point of contact within the agency to which the individual is being referred.
- J. When the DVR determines that a priority category can be opened, the first category will be for individuals with the most significant disabilities. All individuals assigned to this priority category will be served by the date of application before opening the next priority category. Once all individuals with the most significant disabilities are served and the waitlist cleared, the next priority category will open, and all individuals with significant disabilities will be served based on the date of application. Once all individuals with significant disabilities have been served and the waitlist cleared, the last and final category will be opened. All individuals with a disability will be served by the date of application.
- K. When an Order of Selection is implemented, those students receiving pre-employment services before being assigned to a closed order of selection priority category will continue to receive the same and any required activities under pre-employment-transition services. Individuals receiving services under an IPE will not be affected by the priority codes and will continue to receive cost and no-cost services (34 CFR §361.36(a)(2)(i)). Core requested activities under pre-employment-transition service to students with a disability include:
  - job-exploration counselors,
  - work-based learning experiences,
  - counseling on opportunities for enrollment in a comprehensive transition and postsecondary education programs at institutions of higher education,
  - workforce readiness training, and
  - instruction in self-advocacy.
- L. Generalized group transition services under the services to groups authority can be provided to students and youth with a disability, regardless of whether the student or youth is assigned to a priority category waiting list. These generalized group-transition services are to benefit a group of students or youth and are not individualized services directly related to an IPE. Services may include but are not limited to:
  - group tours of universities and vocational-training programs,
  - employer or business site visits with workforce development, and
  - career fairs coordinated with workforce development and employers to facilitate mock interviews and résumé writing.
- M. Other general services applicable to groups of students with a disability and youth with a disability.

Core required activities under pre-employment-transition services to students with a disability include:

- job-exploration counseling,
- Work-Based Learning Experiences (WBLEs),
- counseling on opportunities for enrollment in a comprehensive transition and postsecondary education programs at institutions of higher education,
- workplace-readiness training, and
  - instruction in self-advocacy.

## **4. Service Status and the IPE**

### **4.1 Policy Statement**

Services required to achieve an employment outcome are provided in Service Status. The mechanism for providing services is the IPE. The IPE is the written agreement between the DVR and the eligible participant. It is designed to achieve an employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The IPE is developed in collaboration and partnership with the participant or the participant's representative, as appropriate, and the VR counselor as soon as possible no longer than 90 days from the date of determining eligibility or the date of exit from the Order of Selection waitlist (delayed status).

### **4.2 Comprehensive Assessment**

During the development of the IPE, the VR counselor must conduct an assessment of the participant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment of the participant, as these issues relate to identifying an employment outcome and the nature and scope of rehabilitation services necessary to achieve that outcome. In conducting the assessment, the VR counselor must:

- to the extent possible, use existing information gathered during the eligibility-determination process.
- to the extent possible, use existing information that is current.
- use information from other programs and providers, mainly information used by education officials and the Social Security Administration.
- use the information provided by the participant and the participant's family.
- conduct the assessment in the most integrated setting(s) possible, consistent with the informed choice of the participant.
- interpret the findings of the comprehensive assessment with the participant.
- Utilize career assessments, evaluative reports, counseling, labor market to assist in conducting thorough assessment in supporting vocational goal.

### **4.3 Options for Developing an IPE**

There are various alternatives for developing the IPE. To facilitate an informed choice regarding which option is best suited to the participant's needs, the following information shall be provided to the participant, or as appropriate, the participant's representative, in writing and, if appropriate, in the native language or mode of communication of the participant or the participant's representative information regarding the alternatives available regarding developing an IPE. These options are listed on the Participant IPE Development Options handout and are as follows:

- The participant writes the IPE.
- The participant writes the IPE with their representative or an advocate.
- The participant writes the IPE with the DVR counselor.
- The participant writes the IPE with an independent VR counselor or another advocate. The DVR will not cover the cost associated with payment to an independent VR counselor to assist with developing an IPE.
- The participant may use a combination of the above options. The eligible participant may decide to write part of the plan or obtain assistance from a representative, an advocate, or a VR counselor during the process.

The VR counselor should supply information

- on the availability of consultation and technical assistance from the rehabilitation counselor in developing all or part of the IPE.
- describing the full range of components included in the IPE.
- describing the DVR's Participant Financial Contribution and policy regarding comparable services and benefits.
- regarding the participant's rights, including the availability of the Client Assistance Program (CAP).
- regarding the choice of vendors and the procurement options available.
- above and beyond types of information listed above, as requested by the participant and/or the participant's representative necessary to exercise informed choice in completing the IPE.

The VR counselor shall make the IPE and other pertinent forms available and discuss the alternatives for developing the IPE with the eligible participant or, as appropriate, the participant's representative.

A determination shall be made by the participant on which alternative is most appropriate. The requirement that the VR counselor and program manager must approve the final IPE, regardless of what option for the development of the plan is chosen, should be communicated to the participant or the participant's representative at that time.

#### **4.4 Employment Outcome**

An appropriate employment goal is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the participant. It should also result in employment in an integrated setting. Identifying an appropriate employment goal and obtaining an agreement between the participant and VR counselor on the employment goal is essential to successful rehabilitation. In determining whether the individual possesses the strengths, resources, priorities, concerns, abilities, and capabilities needed to achieve the desired employment goal, the VR counselor may acquire performance-based data through evaluations, such as situational assessments, intelligence or aptitude evaluations, and other essential

information utilizing any appropriate methods available. These factors include but are not limited to the following:

- transferable skills,
- education and academic achievement,
- financial situation and resources,
- level of independence,
- motivation to work,
- personality,
- physical and mental limitations,
- talents,
- aptitudes,
- work behaviors,
- intelligence,
- attitudes,
- interests,
- transportation,
- job accommodations,
- assistive technology, and
- accessibility.

**Table 5***Definition of Terms*

<b>Term</b>	<b>Detail</b>
Consistent with capacities and abilities	Work that is not precluded by the disability and will not exacerbate the condition; work that is compatible with the individual's mental or physical abilities or aptitudes (not solely determined by earnings or income level).
Transferable skills	The participant's transferable skills, education, and abilities should be fully explored. These strengths and resources should be used to the fullest extent when identifying an appropriate employment goal. Primary consideration should be given to using skills that the participant already possesses so that the participant can obtain or return to suitable employment with counseling, selective placement, and restoration or other appropriate and necessary rehabilitation services.
Labor market	Local labor market conditions must be considered in determining the appropriateness of an employment goal. If the local market for a participant's desired employment goal is limited, the focus should be on the participant's informed choice. Support for the employment goal depends on the participant's ability to achieve their desired employment outcome.
Employed participants	In providing VR services to a participant who is currently employed but whose job is inconsistent with the participant's strengths, resources, priorities, concerns, abilities, and capabilities, the VR counselor must help that participant achieve employment consistent with the above and informed choice. Under such circumstances, "career advancement" or "upward mobility" factors should be considered in identifying an employment goal.

**4.5 Guidelines for Developing an IPE**

- A. The IPE shall be developed promptly. An IPE should be developed as soon as all the pertinent information is available but no later than 90 days following determining eligibility or the date of exit from the Order of Selection waitlist (delayed status). An exception to IPE development within 90 days of determining eligibility or exiting from delayed status is only permissible when agreed to in writing by the participant, the participant's representative when appropriate, and the VR counselor. A written extension must indicate the expected date of the IPE completion. The VR counselor should take all steps to ensure the timely development of the IPE and promptly address any issues causing a delay.

- B. The IPE shall be developed and implemented in a manner that affords the participant, or as appropriate, the individual's representative, the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational-rehabilitation services to be provided under the plan, the entity that will provide the services, the employment setting, the settings in which the services will be provided, and the methods used to procure the services. The methods used to purchase goods and services may be flexible, but the agency and participant must comply with the recognized State procurement requirements.
- C. Rehabilitation services identified in the IPE must be needed to achieve the employment outcome, be provided in the most integrated setting possible, and be consistent with the informed choice of the participant.
- D. When applicable, Both the Participant Financial Contribution and comparable services and benefits must be considered when identifying payment sources for planned services.
- E. The IPE must contain statements concerning the expected need for post-employment services (PES) before closing the case of a participant Successfully Rehabilitated and, if possible, include a description of the terms and conditions for the provision of any PES identified and identification of comparable service and benefits to be used for the PES.

#### **4.6 Procedures**

- A. Review with the participant or, as appropriate, the participant's representative, IPE approval requirements, emphasizing the need for counselor approval and possible subsequent supervisor approval.
- B. Review with the participant or, as appropriate, the participant's representative all pertinent data gathered during the comprehensive assessment.
- C. Ascertain from the participant the chosen method of IPE development based on options provided in the Individualized Plan for Employment Development Options handout.
- D. Provide technical assistance required for developing the IPE.
- E. Complete the Participant Financial Statement to determine the level of the individual's participation in the cost of the plan. If the participant receives SSI or SSDI, the participant is exempt from the Participant Financial Contribution.
- F. Evaluate the availability of comparable services and benefits when applicable.
- G. Complete all sections of the IPE in the client-data system.
- H. Submit for approval as necessary. If the supervisor does not approve the IPE, the supervisor shall consult with the counselor and clearly outline the reasons and the changes required to obtain approval.
- I. Obtain the signatures of the participant or, as appropriate, the participant's representative and the VR counselor. The counselor signs the IPE after the participant signs it.
- J. Provide a copy of the IPE, as well as a copy of the Rights and Responsibilities handout and information for the Client Assistance Program (CAP) to the participant or, as appropriate, to the participant's representative and, if

applicable, explain it to the participant in the native language or appropriate mode of communication of the participant or representative.

- K. A copy of the signed IPE shall be placed in the electronic case file.
- L. Authorize planned services once the IPE is approved and signed.
- M. Establish an educational goal in any instances in which an IPE supports training that leads to measurable skills gains. The educational goal should be aligned with the IPE and monitored as appropriate based on the training period.
- N. Review the achievement of any measurable skills gain in alignment with the established educational goal. Measurable skills gains are tracked and entered into the Case-Management System. Measurable skills gains must be monitored quarterly with the VR counselor and the participant.
- O. Review the IPE annually or more often, if necessary, by the participant and the VR counselor. At the time of the annual review, the VR counselor shall meet with the participant, or as appropriate, the participant's representative, to assess the participant's progress in achieving the employment goal and to amend the IPE, as necessary.
- P. Document annual reviews in the plan review.

#### **4.7 IPE Amendments**

The IPE must be amended as necessary to reflect the changing vocational rehabilitation needs of the participant. An amendment is required when there are changes in the following areas:

- the employment goal,
- the vocational-rehabilitation services to be provided, completed, canceled
- vendor(s) for an identified service, or
- an extension in program completion dates.

IPE amendments are reflected as subsequent plans in the Case-Management System. The provisions related to informed choice must continue to be applied. When adding or extending new services, it is necessary to apply the Participant Financial Contribution, as appropriate, and review the availability of comparable services and benefits.

Appropriate approval from the area manager must be obtained for all amendments. Amendments do not take effect until agreed to and signed by the participant or, as appropriate, their representative and the VR counselor. The start date in the Case-Management System must be entered after the participant and the VR counselor sign the IPE. The counselor signs the IPE after the participant signs it. A copy of the IPE Amendment should be provided to the participant or, as appropriate, their representative, and a copy should be retained in the electronic case file.



## **5. Supported Employment**

### **5.1 Policy Statement**

The DVR supports the employment of individuals with a disability, including those with the most significant disabilities who, without intense, comprehensive, and ongoing support, would be unable to locate, train for, or maintain employment. Supported Employment services emphasize the coordination of services from various sources, including other State and federal agencies, private nonprofit entities, employers, and family members that are intended to provide the intensive and long-term support required for the participant to become employed.

#### **5.1.1 Definitions**

##### **5.1.1.1 Supported Employment (SE) and Supported Employment Services.**

The term “supported employment” means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment that is individualized and customized, consistent with the strengths, abilities, interests, and informed choice of the individuals involved or individuals with the most significant disabilities:

- for whom competitive integrated employment has not historically occurred; or
- for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and
- who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the DVR (34 C.F.R. 363.1(b)(2)) to perform the work involved.

The term “supported employment services” means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in a supported employment, including a youth with a disability, that are provided singly or in combination and are organized and made available in such a way as to assist a participant in achieving competitive integrated employment. These services:

- are based on a determination of the needs of a participant as specified in an Individualized Plan for Employment (IPE); and
- are provided by the DSU after job placement for a period of not more than 24 months, except that this period may be extended, if necessary, to achieve the employment outcome identified in the IPE.

Supported employment funding can only be used for individuals deemed Most Significantly Disabled, whose status is employed, and who will have access to long-term funding.

#### **5.1.1.2 Competitive Integrated Employment.**

“Competitive integrated employment” means work that is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:

- is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) or the rate required under the applicable State or local minimum-wage law for the place of employment; and
- is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with a disability and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
- in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with a disability and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
- is eligible for the level of benefits provided to other employees; and
- is at a location
  - a. typically found in the community; and
  - b. where the employee with a disability interacts to perform the duties of the position with other employees within the particular work unit and the entire work site and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with a disability (not including supervisory personnel or individuals who are providing services to such an employee) to the same extent as employees who are not individuals with a disability and who are in comparable positions interact with these persons; and
  - c. presents, as appropriate, opportunities for advancement similar to those for other employees who are not individuals with a disability and who have similar positions.

#### **5.1.1.3 Working on a Short-Term Basis Toward Competitive Integrated Employment.**

Individuals with most significant disabilities, including youth with most significant disabilities, served under the supported employment program may work on a short-term basis toward competitive employment in an integrated setting so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving a supported-employment outcome. In limited circumstances, within a period not to exceed 12 months from the achievement of the supported-employment outcome, a longer period may be necessary based on the individual's needs and is acceptable if the individual has demonstrated progress toward competitive earnings based on information in the service record (34 CFR §363.1(c)).

Working on a short-term basis toward competitive integrated employment in supported employment is work in which an individual receives ongoing support services while working in an integrated setting and is progressing or moving toward the minimum wage level. An individual in supported employment working toward competitive employment would not be considered to have achieved a competitive-employment outcome until the individual is earning the higher federal minimum wage or the rate required under the applicable State or local minimum-wage law for the place of employment.

#### **5.1.1.4 Most Significant Disability (refer to Section 3.2.4.1).**

**5.1.1.5 Integrated Work Setting.** An “integrated work setting” is typically found in the community in which applicants or participants interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or participants, to the same extent that nondisabled individuals in comparable positions interact with other persons. With respect to an employment outcome, an integrated work setting:

- is typically found in the community;
- is one in which the employee with a disability interacts to perform the duties of the position with other employees within the particular work unit and the entire work site and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with a disability (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with a disability and who are in comparable positions interact with these persons; and
- presents, as appropriate, opportunities for advancement similar to those for other employees who are not individuals with a disability and who have similar positions.

**5.1.1.6 Extended Services.** “Extended services” are ongoing support services that are needed to support and maintain an individual with a most significant disability in supported employment and are provided by a State of New Mexico agency, a private nonprofit organization, an employer, or any other appropriate resources other than the DVR after the individual has made the transition from support provided by the DVR.

Examples of extended services include but are not limited to ongoing job coaching, follow-along support to include regular contact with employers, natural supports at the job site, guardians, parents, and other involved professionals who reinforce and stabilize job placement. Examples of funding sources include but are not limited to Adult DD Service Agencies, local mental health clinics, and Social Security funds.

The DVR may provide extended services to youth with the most significant disabilities for a period of time not to exceed four years or until such time that a youth reaches the age of 25 and no longer meets the definition of a youth with a disability, whichever occurs first (34 CFR §363.4(a)(2)).

**5.1.1.7 Customized Employment.** The term “customized employment” means competitive integrated employment for an individual with a most significant disability or a significant disability based on an individualized determination of the strengths, needs, and interests. Customized employment is designed to meet the specific abilities of the individual with a significant disability and the employer's business needs. It is carried out through flexible strategies, such as job exploration by an individual working with an employer to facilitate placement, including

- customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;
- developing a set of job duties, a work schedule, a job arrangement, specifics of supervision (including performance evaluation and review), and determining a job location;
- gaining representation by a professional chosen by the individual or the self-representation of the individual in working with an employer to facilitate placement; and
- providing services and supports at the job location.

#### **Limitations on a Participant’s Entering Employment that is Subminimum Wage.**

No individual with a disability who is age 24 or younger may be compensated at less than the federal minimum wage unless at least one of the following conditions is met:

1. The individual is currently employed, as of July 1, 2016, by an entity that holds a valid subminimum wage certificate pursuant to section 14(c) of the Fair Labor Standards Act of 1938.
2. The individual, before beginning work that is compensated at a subminimum wage, has completed and produces documentation indicating completion of each of the following actions:
  - The individual has received pre-employment-transition services that are available to the individual from the DVR or transition services under the Individuals with Disabilities Education Act.
  - The DVR provides documentation of pre-employment-transition services received, certified, and filled out.

*Note.* If the DVR does not provide all five of the core pre-employment-transition services, then the DVR must contact the LEA to provide documentation of transition services received with the LEA.

Another exemption is acceptable if the individual has applied for vocational rehabilitation services under Title I, with the result that:

1. The individual has been found ineligible for such services and has documentation regarding the determination of ineligibility (MOP 3.2.4.1 Procedures for determining ineligibility). The DVR is to provide the individual or the guardian with the ineligibility letter.

2. The individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other proper modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including
  - the reasons for the determination, including the clear and convincing evidence that forms the basis for the determination of ineligibility; and
  - a description of the means by which the individual may express and seek a remedy for any dissatisfaction with the determination, including the procedures for review by an impartial hearing officer.
3. The individual has been determined to be eligible for vocational-rehabilitation services, and
  - The individual has an Individualized Plan for Employment (IPE);
  - The individual has been working toward an employment outcome specified in the IPE, with appropriate supports and services, including supported employment services, for a reasonable period without success;
  - The individual's vocational-rehabilitation case is closed;
  - The individual has been provided career counseling, information, and referrals to federal and State programs, as well as other resources in the individual's geographic area, that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment, and such counseling and information and referrals are not for subminimum wage employment with an agency that holds a subminimum wage certificate.

### **During Employment.**

In general, the agency holding the subminimum wage certificate may not continue to employ an individual, regardless of age, at a subminimum wage unless, after the individual begins work at that wage, at the intervals described in paragraph 2, the individual (or the individual's parent or guardian)

- is provided by the DSU career counseling, information, and referrals described in section 511 subsection (a)(2)(B)(ii) of WIOA, delivered in a manner that facilitates independent decision-making and informed choice, as the individual makes decisions regarding employment and career advancement; and
- is informed by the employer of self-advocacy, self-determination, and peer-mentoring training opportunities available in the individual's geographic area provided by an entity that does not have any financial interest in the individual's employment outcome under applicable federal and State programs or other sources.

**Timing.** The actions required under subparagraphs (A) and (B) of paragraph (1) of Section 511 shall be carried out once every six months for the first year of the individual's employment at a subminimum wage and annually after that for the duration of such employment.

Small Business Exception. If the entity described in subsection (a) of section 511 is a business with fewer than 15 employees, such entity can satisfy the requirements of subparagraphs (A) and (B) of paragraph (1) by referring the individual, at the intervals described in paragraph (2), to the DSU for the counseling, information, and referrals described in paragraph (1)(A) and the information described in paragraph (1)(B).

### **Documentation Process.**

Such process shall require that in the case of a student with a disability:

- If such a student with a disability receives and completes each category of required activities in pre-employment-transition services, such completion of services shall be documented by the DSU in a manner consistent with this section.
- The pre-employment-transition services caseload in the Case-Management System retains actual services for Pre-employment services provided by the Department of Vocational Rehabilitation (DVR).
- If such a student with a disability receives and completes any transition services available for students with a disability under the Individuals with Disabilities Education Act, such completion of services shall be documented by the appropriate school official responsible for the provision of such transition services in a manner consistent with this section;
- The DSU shall provide the final documentation, in a form and manner consistent with this section, of the completion of pre-employment-transition services as described in clause (i) or transition services under the Individuals with Disabilities Education Act, as described in clause (ii), to the student with a disability within a reasonable period of time following the completion; and
  1. The DVR will obtain a signed Release of Information from the individual or guardian addressed to the LEA.
  2. The DVR will make at least three attempts to obtain documentation from the LEA.
  3. Copies of verification requests for LEA documentation will be retained in the electronic case file.
  4. If no documentation is obtained, the VR counselor will provide verification on DVR Form 511 A with a signature demonstrating that all attempts to collect documentation from the LEA have been unsuccessful.

When an individual has completed the actions, and their case has been closed as unsuccessful, the DVR shall provide the individual with the following documents:

- a closure letter indicating unsuccessful case closure;
- a customized letter documenting that the DVR provided career counseling and information and referrals to federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain

competitive integrated employment and that the individual was not referred to agencies with subminimum wage certificates for employment.

### **Verification.**

**Before employment:** Before an individual under the age of 25 begins work for an entity holding a 14(c) certificate subminimum wage, the entity shall review such documentation provided by the individual to the entity that indicates that the individual has completed the actions described in subparagraphs (A) (pre-employment services) and (B) (applied for assistance from the DVR), and the entity shall maintain copies of such documentation.

**During Employment:** To continue to employ an individual at a subminimum wage, the entity described in subsection (a) shall verify completion of the requirements of subsection (c), including reviewing any relevant documents provided by the individual, and shall maintain copies of the documentation described in subsection (d).

### **Review of Documentation**

The entity shall be subject to review of individual documentation by a representative working directly for the DSU or the Department of Labor at such a time and in such a manner as may be necessary to fulfill the intent of this section, consistent with regulations established by the DSU or the secretary of labor.

## **5.2 Eligibility Criteria**

To be eligible for Supported Employment services, an individual applicant must meet the criteria for most significantly disabled and meet the eligibility criteria for the basic support VR program as outlined in the Eligibility Section. Furthermore, because of the severity of the individual's disability, the individual must require intensive supported employment services and extended services to maintain competitive employment. The individual must also have an identified long-term funding source for extended services or a reasonable expectation that sources will become available at the time of transition to extended services.

## **5.3 Guidelines**

All guidelines and procedures outlined in the Application, Eligibility, and Closure Sections for the basic support program apply to Supported Employment, along with the additional eligibility criteria identified above. If the eligibility criteria for Supported Employment above are unmet, every effort is made to serve an eligible participant under basic support program guidelines.

In SE cases, the DVR may provide an individual with VR services under an IPE (e.g., job development and placement services) before beginning ongoing support

services (e.g., job retention and follow-along services) through the supported employment program. The DVR may coordinate VR services using Title I funds and supported employment services using Title I and IV funds through the same vendor.

Ongoing communication with the provider of VR services (e.g., job development or placement) and supported employment services (e.g., job-coaching services) and the guardian or representative and the case manager (in some instances) is critical to assess the participant's placement and training needs monthly and to determine when stability on a job site has occurred. Monthly written reports from the vendor, supplemented by verbal reports and actual worksite visits by the VR counselor or designee, as necessary, are strongly encouraged.

#### **5.4 Requirements for a Supported Employment (SE) IPE**

The IPE can be developed once eligibility for Supported Employment (SE) services is determined. All guidelines and procedures identified in developing a basic support plan apply to SE cases. In addition, an IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must:

- reflect placement in an integrated setting before providing supported employment services (e.g., ongoing support services) to maximize the number of hours worked by the participant based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual with the most significant disability.
- specify the supported employment services to be provided by the DVR (e.g., job coaching).
- specify the expected extended services needed, such as natural support, job coaching on an as-needed basis, ongoing guidance, counseling, emotional support, and mental health treatment.
- identify the source of extended services for the individual with a most significant disability, including youth with the most significant disabilities. If it is impossible to identify the source of the extended services when the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those resources will become available. The DVR may only fund extended services for youth with most significant disabilities for up to four years or until the individual turns 25 and no longer meets the definition of a "youth with a most significant disability," whichever comes first.
- coordinate IPE services with services provided in the participant's Individualized Service Plan (ISP) or other individualized plans established by other support programs.
- provide periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirements established in the IPE by the time of transition to extended services.



- identify, to the extent that on-the-job skills training is provided, that the training will be provided onsite.

Services under an SE IPE are not to exceed 24 months in duration. Under special circumstances, a longer period may be needed to achieve job stabilization. This must be jointly agreed to by the individual and the rehabilitation counselor and established in the IPE. The 24-month time period for services begins when the participant starts employment.

An IPE must be identified as a Supported Employment case by checking the Supported Employment box in the Case-Management System.

For individuals on the waiver waitlist who are ready for IPE development, these cases should be identified as SE on the IPE.

## **5.5 Guidelines for Closure**

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

- employment outcome has been achieved. The individual has achieved the employment outcome described in the individual's IPE in accordance with § 361.46(a)(1) and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- employment outcome has been maintained. The individual must maintain competitive integrated employment and achieve stability in the work setting for at least 90 days after transitioning to extended services (long-term support), 34 C.P.R. § 363.54. This is necessary to ensure the employment outcome's stability and verify that the individual no longer needs vocational-rehabilitation services.
- has achieved a satisfactory outcome. At the end of this section's appropriate period under paragraph (b), the individual and the qualified DVR rehabilitation counselor consider the employment outcome satisfactory and agree that the individual is performing well.

Post-employment services: The individual is informed through appropriate modes of communication of the availability of post-employment services. The individual has participated in an approved IPE, and the VR counselor, the participant, and the long-term provider are in agreement to transition the case to extended services.

*Note.* Stability on the job site is demonstrated when the individual requires minimal support to maintain employment successfully or when it is determined that the

participant has reached a plateau in their ability to benefit from DVR-sponsored support services, and it is appropriate to transfer the individual to extended support.

*Note.* Guidelines and procedures identified in the Closure Section should be followed regarding closing a Supported Employment case Other Than Rehabilitated.

## 5.6 Scenarios for Supported Employment for Outcomes and Closure

Scenarios for the Achievement of a Supported Employment Outcome and Closure of the Service Record (Vocational Rehabilitation Services and Supported Employment Services Programs FY 2018 monitoring and technical assistance guide).

SCENARIO 1: Bob has been placed in a competitive wage job in an integrated setting individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice. Bob has completed up to 24 months of supported employment services. He has transitioned to extended services provided by a provider other than the Vocational-Rehabilitation (VR) agency and has been stable for at least 90 days after transitioning to extended services.

- Has he achieved a supported employment outcome? YES.
- Can the service record be closed? YES, if the requirements for case closure in 34 CFR §361.56 have also been satisfied.

SCENARIO 2: In the previous scenario, what if Bob is a youth receiving extended services from the VR agency?

- Has he achieved a supported employment outcome? YES.
- Can the service record be closed? NO. Bob continues to receive services (extended services) from the VR agency. Once he no longer is receiving extended services from the VR agency, his case can be closed if the requirements for case closure in 34 CFR §361.56 have also been satisfied.

SCENARIO 3: Bob has been placed in a job in an integrated setting at a subminimum wage that is individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice. He has completed up to 24 months of supported employment services and has transitioned to extended services provided by a provider other than the VR agency. He has been stable for a minimum of 90 days after transitioning to extended services and is receiving VR services while working on a short-term basis toward competitive integrated employment.

- Has he achieved a supported employment outcome? YES.
- Can the service record be closed at the time of the supported employment outcome? NO. Bob is continuing to receive VR services during the short-term basis period from the VR agency with funds under 34 CFR part 361 (Title I VR program funds).
- When can the service record be closed? The service record can be closed when Bob achieves competitive integrated employment within the short-term basis period established pursuant to 34 CFR §363.1(c) and satisfies the requirements for case closure in 34 CFR §361.56, and is no longer receiving VR services provided by the VR agency with funds under 34 CFR part 361. The service record must be closed if

Bob does not achieve competitive integrated employment within the short-term period.

SCENARIO 4: Bob is a youth who has been placed in a job in an integrated setting at a subminimum wage that is individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice. He has completed up to 24 months of supported employment services. He has transitioned to extended services provided by the VR agency. He has been stable for a minimum of 90 days after transitioning to extended services and is receiving VR services funded under Title I VR program funds while working on a short-term basis toward competitive integrated employment.

- Has he achieved a supported employment outcome? YES.
- Can the service record be closed at the time of the supported employment outcome? NO. Bob continues to receive extended services funded under the Supported Employment or the VR program and VR services for a short-term basis from the VR agency with Title I VR program funds.
- When can the service record be closed? The service record can be closed when Bob achieves competitive integrated employment within the short-term basis period, is no longer receiving VR services provided by the VR agency with funds under 34 CFR part 361, and is no longer eligible to receive extended services provided by the VR agency with funds allotted under the Supported Employment program or the VR program or has transitioned to another extended services provider. To close the case, he must satisfy the requirements for case closure in 34 CFR §361.56. The service record must be closed if Bob does not achieve competitive integrated employment within the short-term period. In such a case, extended services should be coordinated with another provider of extended services.

## **6. Employed Status**

### **6.1 Policy Statement**

It is the Division of Vocational Rehabilitation's (DVR's) policy to provide participants with vocational-rehabilitation services leading to competitive integrated employment opportunities in integrated settings. Employment status is used when the participant enters suitable and stable employment. The counselor's role is to monitor the participant's employment and provide the services necessary for the participant to remain employed. Employment outcomes must be work performed in an integrated setting, including competitive employment or self-employment (Options for Employment Outcomes 34 C.F.R. 361.5).

### **6.2 Competitive Integrated Employment**

"Competitive integrated employment" means work performed full-time or part-time in an integrated setting for which an individual is compensated at or above the minimum wage. This compensation must not be less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled and for which the individual is eligible for the level of benefits provided to other employees.

### **6.3 Self-Employment**

Self-employment, including small-business enterprises, such as a cottage industry or home-based employment, is a vocational option that may be considered when the counselor and participant have explored potential options and determined that it is the best course of action to lead to a successful employment outcome. This option recognizes that self-employment is more prevalent in rural areas and that people with a disability tend to be self-employed at rates higher than the rates for individuals without a disability. The decision to support a self-employment plan will be based upon a variety of factors, including but not limited to participant informed choice, total start-up costs, the viability of the business plan, the potential for other financial sources, and the participant's unique strengths, resources, priorities, concerns, abilities, and capabilities.

#### **6.3.1 Self-Employment Guidance**

The process of developing a plan for self-employment is progressive and intensive. It begins with an assessment of a participant's potential for success at self-employment. Pre-IPE self-employment assessments should focus on the process, advantages, and disadvantages of self-employment. During the comprehensive assessment, counselors should evaluate the participant's ability to operate one specifically identified business with all necessary supports and accommodations and generate sufficient income to meet the participant's financial needs and goals.

The purpose of self-employment is to assist individuals to achieve a level of self-sufficiency. This means that the proposed business needs to demonstrate that it can generate enough revenue to cover the business's expenses and sufficient profit to provide a competitive wage or salary for the participant. The participant can use the profits of the business to supplement existing income from other sources (e.g., Social Security Disability Benefits); however, the net income from the small business, divided by hours worked in the business, should amount to a competitive wage.

For the purposes of this policy, self-employment is defined as a person who owns a business and operates a business by himself or herself or as a partner. A self-employed person derives income by conducting profitable operations of that business rather than receiving a salary as an employee. A self-employed person is responsible for paying Social Security and Medicaid taxes in addition to paying income taxes. Occupations such as cosmetology, barber and realty would be considered self-employment under this policy if the participant is responsible for his or her own tax reporting, tools, supplies, and scheduling. When appropriate, individuals who legally organize their business as a corporation and are employed by their corporation may be eligible while in the startup phase of operations. Self-employment requires that the business is, at a minimum, 51% owned, controlled, and managed by the participant.

Self-employment is a business operated by the participant in which that individual performs, supervises, or subcontracts a major part of the product or service to be produced. If the participant requires supports to perform these functions, the long-term funding for these supports will need to be identified in the business plan and/or the IPE. The types of business organizations that are allowed include sole proprietorships, partnerships, corporations, or limited liability companies.

### **6.3.2 Participant Responsibilities**

The participant is required to do the following:

- participate in assessing business potential and business feasibility.
- complete a Small Business Plan and Proposal for Assistance, including a forecast of annual income and expenses. If the participant is not able to complete this independently, the participant can seek assistance from an outside source, and/or the DVR can provide assistance through a business consultant vendor.
- participate in the evaluation and analysis of the proposed Small Business Plan by appropriate public or private entities, when appropriate.
- make available to the small business consultant and/or the rehabilitation counselor pertinent financial records necessary to properly evaluate self-employment (e.g., profit and loss statements).
- maintain routine contact with the counselor. Routine contact means a minimum of one personal contact per month for the duration of the plan.
- cooperate fully with an auditor or other professional consultant, as appropriate, to assess and resolve financial or technical business problems that endanger the success of the business.

If the participant's proposed plan for self-employment is implemented, then the participant shall file a profit-and-loss statement each month in which the business is in operation or until case is closed.

Failure on the part of the participant to cooperate fully with the counselor will result in termination of the self-employment plan. If the participant disagrees, the counselor shall inform the participant of the right to an Informal supervisory review, , or a Fair Hearing.

### **6.3.3 Counselor Responsibilities**

The VR counselor is required to do the following:

- assist the participant in accessing services to develop a small-business plan, such as a Small Business Development Center, SCORE, or a business consultant or vendor.
- make participants aware of small business funding sources other than the DVR.
- forward the participant's completed small-business plan to the small business consultant for an evaluation and a written report, as appropriate.

If the proposed business is recommended by the small business consultant and the counselor concurs, the counselor prepares an IPE with written justification which includes material covered in the following sections.

### **6.3.4 A Description of the Self-Employment Objective**

A description of the self-employment objective is a statement that the participant possesses all of the required education, training, work experience, or equivalent education, training, or work experience, unless waived by the program manager. This statement should include an analysis of the self-employment proposal and the likelihood that the business will be financially successful. It should also include a listing of services needed for the IPE, including the participant's resources and anticipated contributions.

Counselors may, as part of the preliminary and/or ongoing evaluation:

- obtain a credit check for the participant if the participant intends to apply for a business loan or expects to purchase goods on credit.
- arrange for an audit of the participant's business records when the participant and counselor agree that professional assistance is needed to assess and resolve financial and record-keeping problems of the business.
- arrange for expert consultation to assist the participant for a specific purpose (e.g., to improve a marketing plan or an advertising plan).

*Note.* Small business consultants with appropriate expertise may be hired to provide services if no comparable services are available.

### **6.3.5 Business Consultant's Responsibilities**

The small business consultant will be a third-party consultant. Program managers will evaluate résumés, interview consultants, and negotiate fees, if necessary. Consultants should have a college degree, preferably with a major in business administration or a closely related field or extensive experience in the proposed area of self-employment. They must have experience in evaluating, writing, and implementing business plans.

The small business consultant shall review the appropriate small business plan to determine:

- whether the participant possesses the required training, work experience, or business courses.
- the thoroughness and soundness of the participant's business plan.
- the sufficiency of the participant's skills and resources to succeed in the proposed business.
- the likelihood that the proposed market area will support the business.
- the feasibility of the business to produce net profits that will sustain the business operations and pay the participant a competitive wage.

If equipment is requested in a business plan, that plan needs to be reviewed by an expert in that business field to determine reasonableness.

The small business consultant may, if appropriate, arrange to interview the participant to obtain further information to assess the business plan or the participant's qualifications more thoroughly. The small business consultant shall prepare a written report and submit a copy of the report to the counselor. If recommendations are made to the counselor for further work, these should be followed by the counselor.

If the small business consultant concludes that the self-employment proposal is not likely to succeed, the reasons shall be set forth in a written report. If the counselor concurs with the small business consultant, the participant will be informed in writing of the reasons why the DVR will not support the proposed self-employment plan, including the participant's right to communicate with a supervisor, to request an Informal Supervisory Review , and to seek a Fair Hearing with an impartial hearing officer.

### **6.3.6 Self-Employment Assessment Process**

The case record will reflect the following:

#### **A. Assessment of Participant Business Potential.**

- Evaluation of the participant's interests, skills, aptitudes, and personal qualities as they relate to self-employment. This may include formal vocational assessment to the degree necessary to ensure that the individual has the basic skills necessary to operate and manage a small business and/or has the



appropriate supports and accommodations to do so. Formal assessment may be waived by the manager if the participant's work and educational history support the pursuit of the proposed self-employment goal. If it is evident that the participant does not possess and cannot acquire such business management skills, the counselor must document how this will be accommodated through other means.

- Encouragement to individuals from the counselor to attend entrepreneurship training to learn the advantages and disadvantages of business ownership, preparedness from a personal perspective, assessment of skills related to the business venture, and guidelines for receiving technical and financial assistance for business development.
- Examination of the participant's financial goals related to self-employment. Issues such as terminating government benefits, supplementing family income vs. primary source of family support, and earning sufficient funds to maintain competitive employment standards (minimum wage or above) should be considered.
- Expectations of the participant relative to the financial support expected from the DVR should be discussed at the onset. It is important that the participant understands that the DVR may not be capable of funding all expenses associated with the startup of the business.

B. Assessment of Participant's Disability as it Relates to the Self-employment Goal. The counselor will ensure the viability of self-employment as it relates to the participant's disability. This may require consulting with medical or psychological service providers that have been treating the participant. The counselor will use existing medical and psychological records to determine the participant's ability to handle the physical, emotional, and cognitive aspects of self-employment. If existing records are not available, additional assessments, such as a functional-capacity evaluation, an assessment of cognitive skills and abilities, mental status evaluations, and job-site analysis are highly recommended.

C. Business Idea and Exploration of Feasibility.

1. The counselor and the participant will discuss the business idea and its feasibility. The participant will be referred to outside resources for assistance in examining the business ideas and feasibility, as appropriate. Examples of programs that can provide assistance are small business development centers and similar business-assistance programs. The information developed at this stage will provide much of the basic data that will be used in completing the business plan. The following are questions that could be considered in a feasibility assessment:
  - a. Is the idea practical? Will it fill a need?
  - b. What is the competition?
  - c. What is your competitive advantage over existing businesses?
  - d. Can you deliver a better-quality service or product?
  - e. Where will you locate the business?

- f. What equipment or supplies will be needed?
  - g. What financing will be needed?
  - h. What are your resources?
  - i. What is your target market?
  - j. Will the business have sustainable profits by the end of the first year?
2. Testing the feasibility of the business idea should be formalized through a written Feasibility Assessment that documents the following:
- a. Concept Feasibility: Clear description of the business idea; individual's background related to the business concept including education, training, direct experience, and transferable skill sets; and a summary statement that identifies issues of concern regarding the feasibility of the concept.
  - b. Market Feasibility: Geographic description of market area; description of competitors working in or marketing to potential customers in the geographic area; definition of target markets, including size and scope of each market; zoning issues and requirements for establishing a business at the intended location.
  - c. Financial Feasibility: Capitalization requirements consistent with the individual's business concept; identification of resources for startup funding and ongoing capitalization.

The counselor can complete the feasibility assessment on their own, or the counselor can use an assessment authorization to pay a business consultant to complete the feasibility assessment.

At this point in the process, a criminal background check or a credit check may be conducted if appropriate to the type of business to ensure that the participant can obtain all the necessary licenses, permits, bonding, and certifications. This may ensure that no unanticipated barriers related to the participant's legal status will be encountered as the self-employment process is pursued.

### **6.3.7 Evaluation Criteria**

Participants requesting vocational-rehabilitation services in support of self-employment shall possess or acquire the following:

- formal training that would meet current industry or occupational standards being considered for self-employment or a minimum of one year of paid work experience in the occupational area being considered for self-employment; and
- business-management training or experience, to include a minimum of one semester of formal education or six months of work experience or specialized training in at least two of the following: business administration, office management, personnel administration, accounting and bookkeeping, and sales and marketing.

If the participant does not possess the training and experience required prior to starting the new business. In that case, the focus of vocational rehabilitation should be on obtaining the necessary training and experience before developing the business plan. The program manager may waive training, experience, and educational requirements if there is sufficient and compelling evidence that the participant has the capacity and skills to operate and manage a small business, such as a cottage industry or a home-based operation. Factors to consider:

- physical and mental capacities: Analysis of actual work requirements that consider the participant's physical and mental abilities, work history, and availability of family members or others to provide assistance.
- marketing: formal or informal market analysis before starting the business; the participant's ability to conduct marketing activities as necessary to maintain the business.
- sound revenue and expense projections before starting the business (see Business Plan Requirements).
- record keeping: the ability to keep accurate records; knowledge of tax and other State and federal reporting requirements.
- inventory and supplies: projecting the need for initial stock, equipment, and supplies, maintaining inventory, purchasing, etc.
- overall management skills: organization and planning; self-motivation and independence.

### **6.3.8 Consultation**

The business plan shall be reviewed by an independent business consultant with the education, training, work experience, and expertise to provide this service. Consultation may be obtained at any point to determine:

- whether the participant possesses the required training, work experience, or business education.
- the thoroughness and soundness of the participant's business plan.
- the sufficiency of the participant's skills and resources to succeed in the proposed business.
- the likelihood that the proposed market area will support the business.
- the feasibility of the new business producing a profit sufficient to enable the participant to be self-supporting.

Consultation may be waived by the program manager if there is sufficient and compelling evidence that these criteria are met. The small-business consultant shall prepare a written report regarding the viability of the business plan and submit it to the counselor with a recommendation.

### **6.3.9 Business Plan**

A business plan must be developed to determine the feasibility of self-employment as a vocational goal, as well as to determine the basis for the IPE or amendment. Providing that the conditions specified exist, the participant shall complete a proposed self-employment plan that shall include all the following elements:

- a detailed description of the proposed business;
- the products and services to be offered;
- the form of the business, such as a sole proprietorship;
- a detailed marketing plan;
- a financial forecast;
- an itemized list of business expenses;
- a list of assets that the participant will contribute to the business; and
- services that the participant expects the agency to provide.

The DVR's small-business forms may be used as a tool for exploring and assessing the feasibility of a small-business plan. If completed sufficiently, it may stand as the proposed business plan. The DVR's business forms are not required if a comprehensive business plan is available.

### ***6.3.10 Limitations and Restrictions***

Participants must be informed that self-employment services do not include any of the following services:

- businesses deemed illegal by the New Mexico attorney general, state and/or federal regulation.
- business ventures that are speculative in nature or considered high-risk by the Better Business Bureau (or a similar organization). Examples of this might include multi-level marketing or investment schemes.
- the purchase of real estate or vehicles.
- the development of a Nonprofit 501(c)(3).
- salary or benefits for any owner or employee of the business.
- purchase of land or real estate, or the erection of any permanent structure or buildings.
- refinancing existing debt, whether business or personal.

### ***6.3.11 Financial Participation Requirements***

The DVR may not necessarily become the sole funding source for any self-employment endeavor. Participants may be required to contribute toward the self-employment venture in cash, materials, or equipment in an amount consistent with the schedule below. The participant's contribution may come from personal resources, a property critical to the business operation, loans from banks, microlender organizations, or funds derived from a Plan for Achieving Self-Support (PASS) plan. If a participant

wants to apply in-kind contributions, the items must be usable and not be in disrepair and not previously purchased from VR funds. Any client contribution cannot be in the future, and it must be within one year (1 year) prior to the start of the business plan. Items older than a year old may be considered a contribution; however, proof of fair market value must be obtained and documented in the electronic case file.

DVR counselors need to obtain from the participant: copies of receipts or current value from eBay, Amazon, Mercari, or other means to show the current value of the item. Vehicles can only be considered as a contribution if they are used for the small business, and they must be justified in the business plan and the IPE. The DVR will count up to 50% of the Kelly Blue Book value for vehicles used as contributions. The level of participant contribution for business start-up costs (excluding training or modifications necessitated by the participant's disability) is as follows:

**Table 6**

*Cost of Business Plan*

Total Cost of Business Plan	Percent of Agency Financial Contribution	Percent of Participant Financial Contribution
Tier #1 \$1–\$5,000	100%	0%
Tier #2 \$5,001–\$50,000	50%	50%

The DVR will only support business plans of \$50,000 or less. Exceptions may be made on a case-by-case basis after review by a Field Operations Director. Exceptions may include the participant's disability requiring a higher level of income in order to support the cost of disability-related expenses, nature of business with a high-cost rate, and other economic factors that would still make the business profitable despite the high start-up costs. Exceeding the \$50,000 limit is rare and will require extensive documentation to justify.

The agency's policy is to provide eligible participants with vocational-rehabilitation services leading to competitive employment opportunities, including self-employment in an expeditious yet cost-effective manner. The financial-participation requirements above must be applied and will be cumulative to determine to what extent the participant will participate towards the costs of their self-employment plan. The DVR will provide agency financial contribution as per the business plan cost tiers above (see Table 6), starting with tier one, then two. After the appropriate tiers have been applied, the Participant Financial Contribution (PFC) will then be applied to those participants who need to contribute to their plan based on this test. Those participants who meet

financial need or those that are on SSI or SSDI will be excluded from Participant Financial Contribution (PFC), but they are still responsible for the identified level of participation for business start-up costs (excluding training or modifications necessitated by the participant's disability), as outlined above. See examples below:

**Table 7**

*Examples of Self-Employment Plans*

Example #1

Total for Self-Employment Plan = \$5,000

PFC = \$300 participant contribution  
Tier #1: DVR Contributes \$5,000

or PFC = \$0 due to PFS  
Tier #1: DVR Contributes \$5,000

<u>Contribution:</u> <u>Tier #1</u>	<u>DVR</u> <u>\$5,000</u>	<u>Participant</u> <u>\$0</u>	<u>Contribution:</u> <u>Tier #1</u>	<u>DVR</u> <u>\$5,000</u>	<u>Participant</u> <u>\$0</u>
Subtotal	\$5,000	\$ 0	Subtotal	\$5,000	\$0
PFC	-\$ 300	+\$ 300	PFC	-\$ 0	+\$0
Total	\$4,700	\$ 300	Total	\$5,000	\$0

Example #2

Total for Self-Employment Plan = \$10,000

PFC = \$300  
Tier #1: DVR Contributes \$5,000  
Tier #2: DVR Contributes (50%) \$ 4,700  
\$5,000

or PFC = \$0 due to PFS  
Tier #1: DVR Contributes \$5,000  
Tier #2: DVR Contributes (50%)

<u>ContributionDVR</u> <u>Tier #1</u>	<u>Participant</u> <u>\$5,000</u>	<u>\$0</u>	<u>Contribution</u> <u>Tier #1</u>	<u>DVR</u> <u>\$5,000</u>	<u>Participant</u> <u>\$0</u>
Tier #2	\$2,500	\$2,500	Tier #2	\$2,500	\$2,500
Subtotal	\$7,500	\$2,500	Subtotal	\$7,500	\$2,500
PFC	-\$ 300	+\$ 300	PFS	-\$ 0	+\$ 0
Total	\$7,200	\$2,800	Total	\$ 7,500	\$2,500

*Note.* In all cases, the counselor should assist the participant to access or leverage funding from other sources, such as the SBA, ACCION, WESST, or private lenders.

**6.3.12 Guidelines for Successful Self-Employment Closures**

If at the end of the appropriate period, the participant and counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job, the evaluation should consider the following:

- whether the participant is meeting the timeline and expectations addressed in the business plan and the IPE as per the agreed-upon gross income by the participant and counselor.
- whether the participant is increasing the amount of financial equity, including sweat equity. This will be evaluated via monthly profit-and-loss statements.
- whether there is a personal commitment to the business through active involvement and reinvestment in the business.
- whether there is an increasing level of take-home pay and a sustained cash flow.
- whether there is an increasing level of independence and a decreasing reliance on social-service benefits.

### ***6.3.13 Moving Out of Employment Status***

If it is determined that the participant is no longer suitably employed, he or she should be moved out of employment status. This should be documented using the Case-Management System.

## **7. Post-Employment Services Status**

### **7.1 Policy Statement**

To implement a Post-Employment Services (PES) program, an Individualized Plan for Employment (IPE) must be developed for the participant. The IPE must contain a description of the terms and conditions for the provision of any PES, including the anticipated duration of those services. It must also include, if appropriate, a statement of how PES will be provided or arranged through cooperative agreements with other service providers and/or through comparable benefits.

### **7.2 Guidelines**

- A. Post-Employment Services (PES) are only available after placement to individuals whose cases have not been closed and who have not exited from the VR process. PES are limited in nature, scope, and duration and must be for the purpose of the participant's advancing (if the disabling condition is a barrier to advancement), maintaining, and/or regaining employment.
- B. The expected need for PES must be identified in the IPE prior to closing the record of service. If a record has been closed and extensive services are needed, a new case will need to be opened.
- C. PES are intended for the purpose of providing continued support for the vocational goal.
- D. The Participant Financial Contribution must be applied, and comparable benefits must be used in accordance with the financial participation guidelines.
- E. Any service that can be provided in employed status in an approved IPE detailing the necessary Post Employment services with consideration to nature, scope and duration of the service to stabilize employment (i.e. less than one year)
- F. The counselor should reassess the participant's current circumstances and needs in employment to determine whether these needs can be met through Post employment services or whether a new VR case should be opened. (i.e. new vocational goal)



## **8. Closure Status**

### **8.1 Policy Statement**

The types of case closures that can occur include “Rehabilitated” and “Other Than Rehabilitated.” Cases closed “Rehabilitated” are considered successful employment outcomes. Cases closed “Other Than Rehabilitated” involve all other types of closures, including those closed due to Applicant Status, eligible status, and service status. The specific criteria outlined in the guidelines section must be met when proceeding with a case closure. In all instances, a closure letter must be sent to the participant that outlines the reason(s) for closure. A copy of that letter must be kept in the electronic case file. The participant will be provided with a copy of the client rights and responsibilities. Rights and responsibilities will be explained in an appropriate mode of communication for the participant.

### **8.2 Guidelines**

#### **8.2.1 Closed “Rehabilitated”**

A participant has achieved an employment outcome and can be considered “Rehabilitated” when:

- A. The provision of substantial services under the participant’s Individualized Plan for Employment (IPE) has contributed to achieving the competitive integrated employment outcome (34 C.F.R. 361.47 (a)(9)).
- B. The employment outcome is consistent with the participant’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- C. The employment outcome is in a competitive integrated setting.
- D. The individual has maintained the employment outcome and achieved stability for a period of at least 90 days.
- E. The participant and the VR counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.
- F. The participant’s job is compatible with the employment goal identified in his or her IPE.

If a participant accepts a job that is contraindicated by the disability, not commensurate with abilities, or in a different field from that for which he or she trained, the counselor may consider it as a successful rehabilitation if:

- A. after counseling is provided to point out the reasons it is considered questionable or unsuitable, the participant still accepts the job;
- B. VR services were a significant factor in the vocational adjustment leading to employment and the case record reflects this;

- C. the IPE has been amended to reflect the employment goal of the chosen occupation; and
- D. the accepted job meets the definition of competitive integrated employment.

### **8.2.2 Closed “Other Than Rehabilitated”**

“Other Than Rehabilitated” closures can occur for the following reasons in *Applicant Status*:

- A. death,
- B. determined ineligible following TWE(s),
- C. does not require a vocational-rehabilitation service,
- D. foster care,
- E. health or medical,
- F. individual is incarcerated,
- G. institutionalized (not in jail or prison),
- H. no longer interested in receiving services,
- I. reservist called to active duty,
- J. transferred to another agency, or
- K. unable to locate or contact.

“Other Than Rehabilitated” closures can occur for the following reasons in *Eligible, Delayed, Service Status, and Employed Status*:

- A. death;
- B. disability too severe or unable to benefit from services with clear and convincing evidence;
- C. the case is being closed because the participant does not require VR services, has no impairment, or has no impediment to employment; document the reason in a case note;
- D. foster care;
- E. health or medical;
- F. individual is incarcerated;
- G. ineligible (after determination of eligibility);
- H. institutionalized (not in jail or prison);
- I. long-term extended services not available;
- J. no longer interested in receiving services;
- K. reservist called to active duty;
- L. transferred to another agency; or
- M. unable to locate or contact.

## **8.3 Procedures**

### **8.3.1 Closed “Rehabilitated”**

To close a case “Rehabilitated”:

- A. Validate through the participant, guardian, representative if appropriate, Community Rehabilitation Provider (CRP) staff, and/or employer (verbally or in writing) that the participant has achieved suitable employment for an appropriate period of time (not less than 90 days), assuming that the other criteria have been met. Verification and supporting documentation need to be attached in the electronic case file to substantiate employment, position, wages earned, hours worked, stability, client satisfaction, and agreement with the IPE employment outcome goal, employment, and case closure (34 C. F. R. § 361.56).
- B. Verify that the participant is receiving the minimum wage or higher to meet the criteria for competitive employment (34 C. F. R. § 361.47 (a) (9)).
- C. Discuss the closure with the participant, the guardian, or representative, as appropriate, to determine whether PESs will be needed prior to case closure.
- D. Obtain supervisory approval, if applicable, and complete all fields of the closure in the Case-Management System.
- E. Send the participant a closure letter that describes the reason for closure, along with a copy of the Participant Rights and Responsibilities form, which includes CAP information.
- F. Attach the closure letters in electronic case file.
- G. Inform the participant of his or her rights and responsibilities in writing and via another appropriate mode of communication, and document that this has occurred. Save those communications in the electronic case file.
- H. Pay or cancel any outstanding authorizations associated with the case.

### **8.3.2 Closed “Other Than Rehabilitated”**

Prior to determining that an individual is unable to benefit from VR services in employment due to the severity of the disability and prior to proceeding with this type of closure, a written plan must have been developed in the Trial Work Experiences (TWEs). To close a case “Other Than Rehabilitated” from Applicant Status:

- A. If the case is being closed because the counselor is unable to locate or contact the participant, a reasonable effort to contact the participant must be made and documented in the case notes.
- B. If the case is being closed because the participant does not require VR services, has no impairment, or has no impediment to employment, document the reason in a case note.
- C. If the case is being closed because the participant’s disability is too severe and he or she is unable to benefit from services in employment outcome, there must be clear and convincing evidence that this is the case, and this must be documented through Trial Work Experiences (TWEs) in the case record.
- D. Discuss the closure with the participant, the guardian, or representative, as appropriate.

- E. Obtain supervisory approval, if applicable, and complete the closure.
- F. Send the participant a closure letter that describes the reason for closure, along with a copy of the Participant Rights and Responsibilities form, which includes CAP information.
- G. Attach the closure letters in the electronic case file.
- H. Inform the participant of his or her rights and responsibilities in writing and via another mode of communication, and document that this has occurred.
- I. Pay or cancel any outstanding authorizations associated with the case.

To close a case “Other Than Rehabilitated” from Eligible, Service, or Employed status:

- A. If the case is being closed because the counselor is unable to locate or contact the participant, a reasonable effort to contact the participant must be made and documented in the case notes.
- B. If the case is being closed because the participant makes an informed choice to pursue noncompetitive employment or day habilitation programming as the employment goal, the participant must be referred to a local Extended Services Provider (ESP).
- C. Discuss the closure with the participant, the guardian, or representative, as appropriate.
- D. Obtain supervisory approval, if applicable, and complete the closure.
- E. Send the participant a closure letter that describes the reason for closure, along with a copy of the Participant Rights and Responsibilities form and information for the Client Assistance Program (CAP).
- F. Insert a copy of the closure letter in the electronic case file.
- G. Inform the participant of his or her rights and responsibilities in writing and via another appropriate mode of communication, and document that this has occurred (or the reason why this did not occur if it was not possible).
- H. Pay or cancel any outstanding authorizations associated with the case.

## **8.4 Annual Review of Closed Cases**

Case reviews are required for closed cases, as discussed in the following sections.

### ***8.4.1 Cases Closed Due to Ineligibility***

In instances in which the participant’s case was closed due to ineligibility because the participant was “unable to benefit from VR services in achieving an employment outcome,” an annual review must take place within one year and again thereafter if requested by the participant. The purpose of this review is to assess the individual’s circumstances to determine the current appropriateness for VR services. However, this review does not have to occur if:

- the individual has refused the review,
- the individual is no longer present in the State, or
- the individual's whereabouts are unknown.

## **8.5 Guide for Closure**

### **8.5.1 Cases Closed “Successfully Rehabilitated” in Supported Employment**

A participant who receives supported employment and who has achieved a successful employment outcome can be considered “Successfully Rehabilitated” when all these conditions have been met:

- A. The participant has completed supported employment services (not to exceed 24 months).
- B. The participant has maintained employment in a competitive integrated setting for at least 90 days.
- C. The participant has transitioned to extended services (long-term support funding).
- D. The participant has maintained employment and has achieved stability in a work setting for an additional minimum of 90 days after transitioning to extended services.

The employment must be individualized and customized, consistent with the strength, abilities, interests, and informed choice of the individual. Employed 90 days + transition to long-term supports + 90 days employed under long-term supports = closure. Once a participant has transitioned to extended services (long-term support funding) and has maintained employment for a minimum of an additional 90 days (180 days minimum total), this individual has achieved a successful supported employment outcome.

## **9.0 Service Status and Scope of Services**

### **9.1 Policy Statement**

Vocational-rehabilitation services are provided based on the need to minimize barriers to achieve the identified vocational goal. All services must be justified and relevant to the rehabilitation needs of each participant.

### **9.2 Scope of Services**

The following services may be provided throughout the VR process to applicants and participants, based on the need for the service to achieve the employment goal:

- A. assessment for determining the eligibility of applicants in accordance with eligibility requirements and, if necessary, Trial Work Experience (TWE) requirements.
- B. assessment for determining the need for vocational rehabilitation by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.
- C. referral and other services necessary to assist applicants and participants to secure needed services from other agencies.
- D. interpreter services, including sign language and oral-interpreter services, by qualified personnel for individuals who are deaf or hard of hearing and tactile-interpreting services for individuals who are deaf and blind.
- E. rehabilitation teaching services and referral for orientation and mobility services for individuals who are blind.
- F. reader services for individuals who are visually and/or cognitively impaired.
- G. job-related services, including job-search and placement assistance, job-retention services, follow-up services, follow-along services, and post-employment services.
- H. other goods and services determined necessary for the individual with a disability to achieve an employment outcome, including but not limited to items discussed in detail in the following sections.

#### **9.2.1 Purchase of Computer Equipment and Software**

A computer and/or computer equipment may be purchased for participants when this is the most appropriate means of meeting training or employment needs. Plans should include assistance and training for participants to use the equipment requested effectively, with or without reasonable accommodation, when appropriate.

**9.2.1.1 Scope.** The purchase of a computer must meet at least one of the following conditions:

- A. In the case of a self-employment plan, the computer and/or the computer equipment is required for the operation of the business.
- B. In the case of a participant in a training program, the computer is required for success in a training program. The participant does not own a computer, and/or computer is not provided from the school. (It is assumed that a person attending training will require a computer to be successful in the training.)
- C. A computer is needed to participate in a job search.
- D. In the case of employment, a computer is necessary for employment but is not provided by the employer.
- E. When a computer is an assistive technology required to facilitate the individual's full participation in a DVR-sponsored training program or employment, an evaluation from an evaluator who specialized in computer-aided adaptive equipment must be in the file, and the evaluation must support the purchase of the equipment.

*Note.* Allowable auxiliary aides for individuals do not include the purchase of computers, laptops, or tablets for the purpose of receiving pre-employment-transition services.

**9.2.1.2 Guidelines.** Comparable services and benefits shall be explored and used (except when the computer is a form of assistive technology) prior to the purchase of a computer by the agency in accordance with the Financial Participation Section. If a computer is needed for a short time, loan banks, renting the equipment, or a pay-per-hour arrangement should be explored. Computers are purchased only for participants in service status with clear justification in the IPE that documents the connection between the computer and/or the computer equipment to the desired employment outcome.

The counselor shall assess the purpose of the computer to determine the capacity of the equipment needed. The counselor will only provide a device that meets the minimum technical requirements for the activity. Computers will be purchased based on individual need and will come with basic minimum requirements for participation in the IPE activity (training, job search, or employment).

The purchase of a computer will be considered only if the participant is able to take responsibility for maintaining, replacing, and upgrading the equipment and software. The IPE must reflect the participant's role in maintaining, replacing, and upgrading the equipment. Counselors may consider assisting with upgrades for purchased computer systems if the additional equipment or upgrade is required due to a change or progression of the disabling condition or to obtain or maintain employment. Prior to the purchase of a computer, the counselor will determine the need for any orientation or training in computer use. The IPE will reflect the training needed.

## **9.2.2 Counseling and Guidance**

Providing high-quality vocational counseling and guidance remains a fundamental aspect of the VR program and a key element in the successful rehabilitation of individuals with a disability. In all cases, vocational counseling and guidance services should be provided and included in an IPE. These services assist

with identifying and addressing individual needs. These services may be all that is required to return the participant to work. All counseling sessions held with an applicant or eligible participant shall be documented in a case note.

Counseling is generally provided to inform individuals of the following:

- the disability and functional limitations;
- the availability of training, medical resources, or other resources;
- how to obtain comparable benefits;
- occupational requirements, job market trends, available openings, and other vocational topics;
- agency policies and procedures related to the rehabilitation process;
- information regarding service providers and service options to facilitate informed choice;
- explanations of procurement guidelines for purchasing goods and/or services;
- assistance available for participants who need to make any vocational and psychosocial adjustments to the disability;
- internships and employment opportunities;
- how to obtain support, coordination, or assistance in receiving needed services.

### **9.2.3 Maintenance**

Maintenance is financial support provided to an applicant or eligible participant for expenses related to subsistence, such as shelter, utilities, food, and personal items that are in excess of the normal expenses of the individual. In addition, maintenance must be necessary for participation in the assessment for determining eligibility and the need for vocational rehabilitation or the individual's receipt of vocational-rehabilitation services under an IPE. Maintenance is provided only to enable the individual to participate in and derive the full benefit from other VR services.

#### **9.2.3.1 Limitations.** Maintenance is not:

- intended as a means for increasing the participant's standard of living.
- to be used as a means to pay for any previous or current expenses incurred by the participant or a family member other than those extra costs of subsistence required by the applicant or participant to participate in the rehabilitation process.
- to be provided during periods in which the IPE or other services are interrupted, such as summer vacations from school or while waiting for a VR program to begin.
- intended to cover luxury items.

*Note.* Under no circumstances should the DVR attempt to resolve a participant's debt or financial difficulties (e.g., making bank payments or installments on furniture or credit cards) through maintenance payments.

**9.2.3.2 Guidelines.** Maintenance can be considered to cover a participant's subsistence costs that are above and beyond their normal subsistence costs and are a direct result of participating in the assessment for eligibility of VR services or planned



services in an approved IPE. The Participant Financial Contribution must be applied in accordance with the Financial Participation Section of this manual when providing maintenance services.

Comparable services and benefits should be considered fully when providing any maintenance according to the Financial Participation Section of this manual. The comparable services and benefits listed below must be applied prior to providing maintenance. In cases in which the participant is ineligible for a comparable benefit, documentation to that effect must be included in the case notes prior to providing maintenance.

Rent payments for housing are restricted to those necessary for a participant to attend training or to relocate to new employment. The DVR will compare the costs of off-campus housing to student housing to support the most economically efficient living arrangement, considering available comparable benefits.

Comparable services required when available:

1. Rent or housing subsidy
  - a. TANF, general assistance
  - b. SSI or SSDI
  - c. workers' compensation
  - d. city, county, HUD, or other housing subsistence
2. Utilities
  - a. same as above to offset housing expense
  - b. city, county, or State utility subsidies
3. Food
  - a. Supplemental Nutrition Assistance Program (SNAP).
  - b. commodities
4. Room and board while enrolled in an academic program
5. Student federal financial aid

*Note.* It is important to review the case periodically to assess whether maintenance should be provided. In instances in which it is being provided over an extended period of time, assessment should be made about the appropriateness for continued maintenance assistance, as well as changes in financial need.

**9.2.3.3 Income Support Division (ISD).** Because maintenance is a subsistence payment, the ISD will reduce funds from TANF and/or General Assistance by an amount equal to the amount of maintenance provided the DVR. Therefore, if a participant is receiving TANF or General Assistance, it is not necessary to provide maintenance. The ISD excludes the following DVR payments in determining the participant's financial assistance eligibility and payment:

- transportation;
- medical, psychological or other therapeutic services;
- equipment, tools or stock;
- dependent care; • training related costs; and
- other goods and services authorized directly to a vendor

**9.2.3.4 Relocation Expenses.** Relocation expenses in connection with job placement that is outside the commuting distance from the participant's current residence can be provided when the following conditions are met:

- The move is necessary to achieve the participant's employment goal.
- Job security has been established.
- There is a significant distance between the participant's current residence and the job site.

*Note.* "Significant distance" is considered more than 30 miles from the participant's current residence. In some instances, it may be necessary for the VR counselor to assess the participant's limitations in the ability to commute.

## **9.2.4 Other Services and Goods**

**9.2.4.1 Definitions.** Definitions of other goods and services are provided below.

**9.2.4.1.1 Equipment.** Mechanical items, such as calculators, power tools, and hand tools.

**9.2.4.1.2 Goods.** Tangible commodities, such as supplies, clothes, books, and furniture.

**9.2.4.2 Self-Employment Equipment and Supplies.** Other goods and equipment can be purchased for an eligible participant to assist in securing, maintaining, or regaining an employment outcome. Comparable services and benefits, as well as the Participant Financial Contribution, must be applied in accordance with the Participant Financial Participation and Self-Employment sections of this manual. The following sections describe various equipment and supplies related to self-employment.

**9.2.4.2.1 Placement Tools.** These include basic tools customarily required for a worker to perform the job that are normally provided by the employee as a prerequisite to work in the field. The counselor is responsible for obtaining verification from the employer of the requirements for basic tools for a particular job.

**9.2.4.2.2 Special Tools.** Special tools are over and above the basic tools normally required and may be provided if needed to improve the participant's job functioning in light of the disability.

**9.2.4.2.3 Training Tools.** Training tools are basic tools required to complete a training program successfully. These may be provided after verification from the training program.

**9.2.4.2.4 Special Adaptive Equipment.** A participant may be provided with special adaptive equipment if required as a reasonable accommodation at the job site.

Adaptive equipment may also be provided if necessary to enable the participant to participate in the rehabilitation program.

**9.2.4.2.5 Shelters.** A permanent structure may not be purchased or remodeled under any circumstances. A portable and easily dismantled shelter (e.g., a storage unit or utility shed), may be provided to house a self-employment venture.

**9.2.4.2.6 Initial Stock.** Stock and supplies, including startup inventory of merchandise or goods for resale may be provided to participants entering self-employment. The quantity purchased should be adequate to ensure a gross profit margin that will allow for replenishment of stock without further support from the DVR.

**9.2.4.2.7 Livestock.** Livestock necessary for establishment a base stock or animals for a farming or agricultural self-employment venture may be provided, as well as initial supplies of seed, fertilizer, feed, etc.

**9.2.4.2.8 Supplies.** Stationery, pens, forms, and other expendable items necessary for the day-to-day operation of a small business enterprise may be provided.

**9.2.4.2.9 Land.** Land may not be purchased under any circumstances.

**9.2.4.2.10 Equipment.** Appliances, apparatuses, machines, fixtures, or furniture may be provided when required by a participant to enter employment or self-employment.

## **9.2.5 Occupational Licenses**

Occupational licenses are any license, certificate, permit, or other written governmental authorization prerequisite to entering an occupation or a small business enterprise. These may be sponsored by the DVR for eligible participants. Examples of occupational licenses include:

- chauffeur's licenses for employment as a cab driver, bus driver, etc.;
- barber or beauty operator, food service, realtor, or other trade licenses;
- business licenses to operate a small business enterprise;
- certification, licensure, or registration for the practice of a profession, such as nursing, mental-health counseling, teaching, massage therapy, psychology, law, etc.

Services in support of obtaining an occupational license may include, but are not limited to:

- licensure, certification, or permit fees;
- transportation and lodging necessary to obtain the license; and
- short-term training or study courses needed to obtain the license.

**9.2.5.1 Guidelines for Purchasing.** Attention should be given to licensure and certification during the development of training plans to ensure that the participant will not encounter obstacles to meeting licensure requirements (e.g., criminal records).

Only licenses and certifications required by the participant to be able to work in the profession shall be covered by the DVR. Other licenses that are not required but that are felt to enhance the marketability of the participant may be provided at the counselor's discretion. Documentation must demonstrate that additional license or certification is a benefit considering the costs necessary to advance or to maintain employment (e.g., a cost/benefit analysis).

Comparable services and benefits, as well as the Participant Financial Contribution, shall be applied when providing support towards licensure.

### **9.2.6 Personal-Assistance Services**

Personal-assistance services are designed to help the participant to perform daily living activities on or off the job that the individual would typically perform without assistance if nondisabled. Examples of personal-assistance services include attendant-care services and training in managing, supervising, and directing personal-assistance services.

**9.2.6.1 Requirements.** Personal-assistance services must be necessary to the achievement of an employment outcome, and the counselor must document this relationship in the Individualized Plan for Employment (IPE). Personal-assistance services may be provided only while the individual is receiving other vocational rehabilitation services. Comparable services and benefits must be applied when providing personal-assistance services.

*Note.* The Participant Financial Contribution cannot be applied when providing personal-assistance services.

### **9.2.7 Placement Job-Related Services**

Placement job-related services consist of those services planned, directed, and coordinated by the counselor that result in employment for the participant. Placement services are designed to address barriers to employment resulting from functional limitations and other attendant factors. Services are provided to enable the participant to obtain and maintain employment. Placement services may include, but are not limited to:

- vocational counseling
- job-readiness skills training
- training in interview skills
- job club

- job referral
- job development
- job placement
- job coaching
- job reengineering
- reasonable accommodations
- task analysis and job analysis
- employer consultation
- tax credits
- federal certification
- ADA issues
- other incentives.

**9.2.7.1 Guidelines.** The use of comparable services and benefits cannot be required, nor can the Participant Financial Contribution be applied when providing job-related services, including assistance with job search and placement, job-retention services, follow-up services, and follow-along services. It is the counselor's responsibility to assess the participant's placement needs, to provide counseling, to plan for the provision of services, and to document these activities. The types of services used should be determined on an individualized basis.

Counselors should enlist services provided by one-stop centers and/or other public or private organizations to promote job placements, as determined appropriate. Placement services may be purchased when such an arrangement is in the best interest of the participant, such as when the DVR is unable to provide services in a timely and appropriate manner. Some placement services are time-intensive and are best arranged for when possible. An individualized determination based on the participant's needs must be made regarding the use of specific placement services through the use of other resources, the counselor, or a combination of both.

When placement services are purchased, the counselor still retains the primary responsibility for directing the placement process. The counselor must assure that high-quality services are being provided. The counselor must provide ongoing counseling to the participant. This requires at least monthly contact with the participant and other vendors to ensure movement in the process.

## **9.2.8 Rehabilitation Technology**

### **9.2.8.1 Definitions.**

**9.2.8.1.1 Rehabilitation Technology.** Rehabilitation technology pertains to applying technologies, engineering methodologies, or scientific principles to meet the needs of and to address the barriers confronted by individuals with a disability in areas including education, rehabilitation, employment, transportation, independent living, and

recreation. Examples of rehabilitation technology include vehicular modifications, telecommunications, and sensory and other technological aids and devices.

**9.2.8.1.2 Rehabilitation Engineering.** Rehabilitation engineering pertains to applying engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted to individuals with a disability in functional areas, such as mobility, communications, hearing, vision, and cognition, as well as in activities associated with employment, independent living, education, and integration into the community.

**9.2.8.1.3 Assistive-Technology Device.** An assistive-technology device is any item, piece of equipment, or product system, acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

**9.2.8.1.4 Assistive-Technology Services.** An assistive-technology service is any service that directly assists an individual with a disability in selecting, acquiring, or using an assistive-technology device, including:

- evaluating the needs of an individual with a disability, including making a functional evaluation of the individual in his or her customary environment;
- purchasing, leasing, or otherwise providing for acquiring an assistive-technology device for an individual with a disability;
- selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing an assistive-technology device;
- coordinating and using other therapies, interventions, or services with an assistive-technology device, such as one associated with existing education and rehabilitation plans and programs;
- training or providing technical assistance for an individual with a disability or, if appropriate, a family member, a guardian, an advocate, or an authorized representative of the individual;
- training or providing technical assistance for professionals, employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with a disability to the extent that training or providing technical assistance is necessary to achieving an employment outcome by an individual with a disability.

**9.2.8.2 Guidelines for Purchasing.** A specialist in rehabilitation technology should be consulted as needed for assistance in providing rehabilitation-technology services. Comparable services and benefits cannot be required when providing rehabilitation technology, including telecommunications or sensory and other technological aids and devices. The Participant Financial Contribution must be applied when providing rehabilitation technology.

Rehabilitation-technology services, aside from evaluations of an individual's rehabilitation-technology needs, should be identified in the IPE with documentation that shows the connection of the rehabilitation-technology service to the identified

employment outcome. Should an assistive-technology device be required during a TWE period, the justification for the device should clearly identify why the device is necessary to address the question of eligibility.

**9.2.8.3 Computers as Assistive Technology.** Computers, as well as computer equipment and software, can be considered assistive-technology equipment if the purpose of the equipment is to provide accommodations for an individual with a disability. Requirements for computer purchases are outlined in the section on purchasing computers.

## **9.2.9 *Diagnosis & treatment of impairments***

### **9.2.9.1       Diagnosis & treatment of impairment services include:**

#### **9.2.9.2**

- diagnostic exams to establish the diagnosis, prognosis, and recommended treatment of a physical condition;
- x-ray or laboratory work;
- corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical impairment that constitutes a substantial impediment to employment;
- necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinic services, including anesthesia;
- dentistry;
- nursing services;
- medically prescribed drugs and supplies;
- prosthetic and orthotic devices;
- eyeglasses and visual services, including visual training, examination, and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with State licensure laws;
- podiatry;
- physical therapy;
- occupational therapy;
- speech or hearing therapy;
- treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical or mental restoration services or that are inherent in the condition under treatment;
- special services for the treatment of an individual with end-stage renal disease, including a kidney transplant, dialysis, artificial kidneys, and related supplies; and
- other medical or medically related rehabilitation services.

#### **9.2.9.2.1 *Assessment Services.*** Medical evaluation reports shall include:

- assessments

- diagnosis
- prognosis
- functional limitations
- recommended treatment (type, frequency, and duration)
- short-term treatment objectives
- expected final outcome of treatment
- testing to the extent needed.

Psychological or psychiatric evaluation reports shall include:

- diagnosis
- prognosis
- functional limitations in behavioral terms
- recommended treatment (type, frequency, and duration)
- short-term treatment objectives
- expected final outcome of treatment
- testing to the extent needed.

If the participant fails to keep an appointment for an evaluation or therapy that results in a financial loss to the vendor, a cancellation fee may be assessed by the vendor, unless the appointment is cancelled at least 24 hours prior to the appointment. No payment will be allowed if the participant was scheduled for a service such as group therapy that causes no loss of time to the vendor. When appointments are scheduled, the individual should be provided in writing with the date, time, location, and phone number to the vendor and made aware of the need to cancel or reschedule (if necessary) at least 24 hours prior to the appointment.

**9.2.9.1.2 Surgery.** Whenever inpatient or outpatient surgery is part of the IPE services, the counselor must ensure that provisions for payment are made through the DVR. Benefits for the participant include:

- all hospital costs: room, board, supplies, drugs, operating room, etc.;
- surgeon and assistant surgeon;
- anesthesiologist and anesthesia;
- x-rays and radiologist;
- lab work;
- post-operative follow-up and treatment;
- other costs, such as copayments, if needed; and
- required medication.

**9.2.9.1.3 Orthotics, Prosthetics, and Other Assistive Devices.** Orthotics, prosthetics, and other assistive devices include hearing aids, eyeglasses, prosthetics, orthotics, or other medical equipment purchased only with a prescription or written recommendation from a licensed or certified diagnostician or provider. The purchase of prescribed assistive devices is subject to the Participant Financial Contribution. Purchase shall be made at the best available price in consideration of policy, with the vendor as the first option. Some medical equipment is on contract with the State



Purchasing Agent (SPA), so the list of SPA contracts should be checked prior to authorizing these services.

The counselor is responsible for discussing the issue of product warranty with the vendor. If a warranty is normally provided, a copy should be placed in the case file. If no warranty is offered, the counselor shall discuss with the participant and the vendor the responsibility for repair or replacement, particularly for prosthetics.

In all cases, counseling should be provided to ensure that the participant is aware of responsibility for repair and replacement after the participant becomes employed.

**9.2.9.1.4 Organ Transplants.** Restoration services can be provided for participants with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and related supplies. These services are only to be provided when other financial support is not available. No other organ transplants are to be provided. Individuals who have successfully undergone organ transplants may be candidates for VR services once the condition stabilizes, provided that other eligibility criteria are met.

**9.2.9.2 Mental Restoration.** Mental restoration is a planned program of professional treatment that is designed to reduce systematically those major functional limitations of a mental or emotional disability that prevent adequate performance in a training setting or an employment setting. Mental-restoration services include:

- A. psychotherapy;
- B. psychoeducational services (e.g., stress management and assertiveness training);
- C. prescribed medication;
- D. medication monitoring;
- E. biofeedback;
- F. psychosocial rehabilitation services;
- G. cognitive therapy and retraining;
- H. therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive mental impairment that constitutes a substantial impediment to employment;
- I. drugs and supplies;
- J. treatment of either acute or chronic complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; and
- K. inpatient or outpatient drug or alcohol treatment.

**9.2.9.3 Guidelines.** Restoration services shall be provided only by facilities and professionals licensed or certified according to State law. Diagnostic examinations and procedures may be provided in any status and do not have to be identified as a service in plans for those individuals in TWE, service, or employed status. In all cases, the

counselor should clarify all rehabilitation issues pertaining to the individual's employability and their relationship to planned restoration services. Counseling and guidance issues necessary for the individual's adjustment should be documented as an integral part of the rehabilitation program.

Comparable services and benefits shall be applied when providing restoration services, in accordance with guidelines on financial participation. When providing restoration services, the following examples of comparable services and benefits shall be explored as appropriate:

- pharmaceutical assistance programs,
- private insurance,
- workers' compensation,
- children's medical services (for ages 21 and under: Department of Health),
- Medicaid,
- Medicare,
- Hill Burton funds,
- Knights Templar Eye Foundation, Inc., and
- county indigent funds.

The Participant Financial Contribution shall be applied in accordance with the guidelines on client financial participation. Restoration services provided under an IPE shall include objectives developed in conjunction with the service provider that identify measurable behavioral outcomes. Psychotherapy must be recommended through a psychological or psychiatric examination to provide psychotherapy in an IPE or a TWE plan. When providing psychotherapy services, a brief monthly report outlining progress made in therapy shall be obtained.

**9.2.9.4 Nontraditional Treatments or Unlicensed Providers.** Costs of nontraditional treatment or services not covered by State regulation (licensures, certificates, etc.) cannot be covered by the DVR. When there is a question about a treatment request or prescription, medical consultation shall be obtained. Treatment plans should be provided to the counselor to assess the value and duration of the treatment or therapy. Continued support of therapy or treatment will be assessed annually to determine progress and the benefit to the participant.

**9.2.9.5 Long-Term Care or Treatment.** The DVR does not provide long-term, medical, psychiatric, or psychological care or treatment. Upon receiving a request for restoration services for the purpose of enhancing an individual's level of functioning to the degree necessary to actively participate in a job search or in training activities, the counselor shall:

- negotiate a reasonable time frame for services,
- identify expected benefits of the restoration services as they relate to the participant's employability,

- ensure that the services are measurable to determine the efficacy of the treatment, and
- obtain a medical consultation, as appropriate.

If the individual has ongoing medical needs (for medication, supplies, etc.), the counselor may assist with these needs during the rehabilitation program, provided that the participant continues to progress in the program. The counselor should consider ongoing medical expenses when determining an employment goal and the level of earnings needed, as the participant will have to assume responsibility for the costs after case closure.

**9.2.9.6 Medication.** The DVR can assist with prescribed medications that are FDA-approved. The DVR cannot assist with the purchase of medications or prescriptions that are not approved by the FDA. The counselor must monitor the efficacy of the medication through medical or psychiatric updates, as well as through contact with the participant.

Ongoing assistance with medication is dependent on medical reports that document participant gains as a result of the medication and counselor documentation that these gains are connected with the participant's employability. Comparable services and benefits, including pharmaceutical assistance programs must be explored and used as appropriate prior to providing assistance with medication.

**9.2.9.7 Consultation.** Medical consultation is expert advice given by a medical practitioner that is related to medical aspects of VR cases. These consultative services are provided by an area or State medical consultant or on a fee-for-service basis by private physicians and are rendered directly to VR counselors and supervisors. The medical consultant does not make eligibility decisions. These remain the responsibility of the VR counselor. The purpose of the medical consultant is to:

- provide technical assistance on medical aspects of rehabilitation;
- help ensure the quality of the medical services received;
- assist the counselor to obtain, understand, and use adequate medical services at a reasonable cost;
- identify and assess the degree of functional limitations using existing medical information;
- interpret and clarify medical terms and information provided in medical reports;
- assist counselors in the choice of practitioners for diagnostics or treatment; and
- provide advice when medical incompetence, negligence, or unlawful acts are suspected.

**9.2.9.7.1 Guidelines for Medical Consultation.** Medical consultation must be obtained during the formulation of an IPE that provides for:

- in-patient or out-patient hospitalization;

- severe physical impairment with uncertain prognosis, even if the DVR is not providing restoration services;
- controversial or experimental medical or health services, even if the DVR is not providing the service; and
- clarification on the AMA standard of care if the counselor is uncertain about a recommended treatment.

**9.2.9.7.2 Guidelines for Dental Consultation.** The dental consultant serves essentially the same purpose as the medical consultant. Cases involving providing any dental services in excess of \$2,000.00 shall be referred to the dental consultant for review. Referrals to the dental consultant shall include:

- cover letter,
- dental examination and treatment plan, and
- x-rays.

## **9.2.10 School-to-Work Transition Services**

**9.2.10.1 Authority.** The Rehabilitation Act of 1973 as amended, 29 U.S.C.A. (29 U.S.C. 701 et seq), 34 C.F.R. parts 361 through 397 Section 22-114-7 at seq., NMSA 1978.

## **9.2.11 Services to Family Members**

Family members may be the most effective resource for providing essential support to participants and can make critical contributions toward their efforts related to job readiness, a job search, and job retention. Family members can be a critical partner in the rehabilitation process, and their participation in the process should be encouraged and respected. Vocational-rehabilitation services to family members of an applicant or a participant can be provided if necessary to enable the participant to achieve an employment outcome.

**9.2.11.1 Definition.** For the purposes of receiving vocational-rehabilitation services, a family member means an individual who either is a relative or a guardian of an applicant or a participant. Someone may also be designated as a family member who lives in the same household or who has a substantial interest in the well-being of the participant and whose receipt of vocational-rehabilitation services is necessary to enable the applicant or participant to achieve an employment outcome.

**9.2.11.2 Scope.** Any VR service allowed an applicant or participant may also be made available to a family member, provided that the service is necessary to enable the participant to achieve an employment outcome.

**9.2.11.3 Requirements.** Services to family members should meet the same requirements as a service being provided to the applicant or participant. If a VR service

is to be provided to a family member, the service must be identified and justified in the respective plan by clearly identifying why the service is necessary to address the question of eligibility or to assist the participant in achieving the stated employment goal. Comparable services and benefits must be used when providing services to family members in accordance with the Participant Financial Participation section. The Participant Financial Contribution must be applied when providing services to family members, in accordance with the Participant Financial Participation section.

## **9.2.12 Training**

**9.2.12.1 Academic Training.** Academic training can occur in a vocational or technical institution, a community college, or a university, either private or public, with the purpose of helping the participant acquire skills specific to a particular job or occupation.

Ample time is required for a comprehensive assessment to be completed to determine whether the academic training program is required to achieve the agreed-upon employment goal. Refer to the policy section on eligibility (in Applicant Status section) and the Individualized Plan for Employment (IPE) (in the service status section) for the average time needed to determine eligibility and to develop an IPE, as these can vary for each participant. An immediate decision of approval or disapproval of a proposed academic program is neither feasible nor appropriate.

Some training programs lend themselves to self-employment. The counselor needs to review employment options with the participant prior to initiating the training program. Refer to self-employment requirements.

**9.2.12.1.1 Prerequisites.** The completion of a training program must be required to achieve the agreed-upon employment goal. Prior to considering academic training, there shall be reasonable evidence of the participant's ability to succeed in the field chosen. The participant must also meet the college or university's standards for admission. Assistance with a limited number of classes can be provided as an additional assessment tool as a continuation of the comprehensive assessment when there is no clear evidence that the participant can or cannot succeed.

If academic training is determined to be required to achieve the employment goal, the participant must provide a copy of the required core classes and follow the outlined curriculum in the school catalog. The Participant Financial Contribution and comparable benefits must be applied prior to the DVR's paying any related costs, including tuition and books.

Academic or training programs must be accredited by an institution or organization approved by the Council for Higher Education Accreditation (CHEA) or by the governing body of the industry. They must be licensed in the State of New Mexico to provide postsecondary training.

Direct payment for postsecondary training is not supported. Postsecondary providers are expected to become vendors to receive payment. The agency does not pay for programs outside the United States.

### **9.2.12.2 Guidelines for College Training Programs.**

**9.2.12.2.1 Grade Point Average (GPA).** Training costs should be authorized one semester at a time, pending the receipt of grade reports. Participants shall maintain at least a cumulative 2.0 grade point average (or the minimum GPA allowed by the academic program, if higher) to continue funding of the IPE. If the participant's GPA falls below this average, the counselor should assess the overall performance of the participant in the training program and the feasibility of assisting with further training. Continued support may be warranted if the participant has suffered an illness or other setback beyond his or her control.

**9.2.12.2 Scope.** Services that can be provided include, but are not limited to:

- tuition and fees.
- room and board.
- books and supplies, as required by the course syllabi.
- tools, but their purchase must be related to the job profession and the related field of study. Tools will be outlined in the equipment form and are considered to be DVR property until they are released to the participant.
- special services to aid in compensating the functional limitations for successful completion of the training program.
- other services listed in the Individualized Plan for Employment (IPE).

**9.2.12.3 Choosing a Postsecondary School.** When choosing a postsecondary school, the training must be necessary to reach the employment goal for a participant with a disability who is receiving services through the DVR. The decision to support postsecondary schooling must be based on the participant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, as well as on agency policies. High-quality academic training can usually be obtained through publicly supported institutions. In comparing postsecondary school programs, the counselor should consider:

- the placement rate of graduates;
- the time required for completion;
- costs, including travel, room and board, or other expenses associated with the training;
- the availability of comparable benefits and or other funding sources; and
- graduation rates.

The DVR supports attendance at in-state community colleges and universities. A participant may be assisted with taking required courses (based on the degree plan) at the in-state community college and universities. If the individual chooses an out-of-state school at a higher cost than an in-state school, if either service would meet the individual's rehabilitation needs, the DVR is not responsible for those costs in excess of the cost of the in-state services (34 C.F.R. § 361.50(b)).

Listed below are guidelines for the maximum amounts of tuition support for an entire associate's degree or bachelor's degree program unless the participant's disability has precluded the achievement of the degree within the time frame. This is to be documented in the electronic case file.

- associate degree's (not including pre-college-level courses): a maximum of 150% of the published length of the degree unless the individual's disability and/or extenuating circumstances result in an excess in the number of credit hours required to complete the program.
- bachelor's degree (including the costs and the time frames of an associate's degree): a maximum of 150% of the standard length of a bachelor's degree program unless the individual's disability and/or extenuating circumstances result in an excess in the number of credit hours required to complete the program (for example, the average length of a bachelor's program is 128 credit hours, 150% of which is 192 attempted hours).

**9.2.12.3.1 Full-Time Status.** Participants will maintain a full-time status as defined by the training institution unless:

- the participant's disability precludes full-time attendance, in which case, a doctor's note should be provided to the VR counselor and reviewed annually.
- the participant must work while attending school, and will, therefore, not be able to maintain a full-time load, in which case, the counselor and the participant shall determine the degree to which the participant's employment affects his or her ability to maintain a full-time load.
- the participant is attending school part-time during the recovery or restoration phase of rehabilitation and will attend full-time at a later date, as appropriate.
- other circumstances beyond the participant's control, such as class scheduling conflicts and/or course availability.

**9.2.12.3.2 Continued Support of Academic Training.** Continuing support of academic training is contingent upon:

- the participant's maintaining at least a cumulative 2.0 GPA or the minimum required by the academic program, if higher.
- the participant's providing an official grade report to the DVR at the end of each term.

- the verification of an annual Federal Aid for Students Assistance (FAFSA) application. No annual verification requirement exists if the participant provides proof that they are no longer eligible to receive federal financial aid based on the receipt of the maximum benefit.
- the participant's maintaining a full-time course load sufficient to complete the program within the standard time frame, barring unusual circumstances.
- the degree plan or certificate plan filed in the case record of the participant's program and evidence of adherence to that program. It is the counselor's responsibility to ensure that the degree plan is being followed and that repeat classes are not being taken. The DVR will not support repeat classes unless otherwise justified.
- the participant's providing a registration document (i.e., a class schedule with associated tuition and fees charged) within a reasonable time frame to allow the counselor ample time, at least before the beginning of the semester or academic term, to review progress, address any relevant issues, and process any necessary paperwork. Authorizations for tuition and fees will not be issued until the participant provides the required documentation.
- the participant's notifying the counselor if he or she must withdraw from school before further sponsorship could be jeopardized. A copy of the withdrawal is needed for the electronic case file.

**9.2.12.3.3 Advanced Degrees.** Advanced degrees may be required to achieve an employment goal. The justification of an advanced degree should include why pursuit of the degree is the most practical method of completing the IPE and attaining the employment goal. Aptitude for graduate-level training is generally indicated by acceptance into the graduate program and satisfactory work at the undergraduate level. Should the participant apply to graduate level schooling and not be accepted in two submissions, the DVR will then support the individual in job-placement efforts with the education and credentials that the participant already possesses. If the specific professional field of study has license requirements, the counselor must ensure that the participant meets the licensure requirements prior to the approval of enrollment in a program for an advanced degree.

#### **9.2.12.4 Training Alternatives.**

**9.2.12.4.1 Private Schools.** Some private institutions offer more intensive programs at higher costs per hour. The shorter duration of the program is not enough to justify going with a private institution. When a request to attend a private institution is made, the counselor should assess the overall cost of participation in the training program, including the availability of financial aid and the costs of tuition, fees, transportation, housing, and any required equipment.

When the overall costs of the training programs are comparable between a public and a private institution, other factors, such as the duration of the program, placement rates for graduates from the institution, disability-related issues, or attendant factors that



may affect school performance should be explored. The counselor, in consultation with the participant, should use his or her judgment to determine the best possible option. When the overall costs of the programs are not comparable, the DVR only supports the program that is less expensive. Should the participant choose to attend the higher-cost program, the DVR will only support the most economical training program. For comparable training programs, the DVR will pay rates charged at in-state institutions after comparable benefits have been applied.

The DVR will not pay the entire cost of a private program at the beginning of the training. Authorization will be made based on the participant's successful progress (including a minimum cumulative 2.0 GPA) on a term basis verified by grade reports. The rehab team will negotiate a payment schedule with private schools that allows for a series of payments based on successful performance. The policy of the DVR is not to issue direct payment to participants to cover the cost of tuition and fees for public or private training entities unless waived by the Rehabilitation Services Unit (RSU) deputy director.

Employment goals that require specific private training programs (e.g., beauty schools, barber schools, dog-grooming schools, massage-therapy schools, and motorcycle-mechanic schools) must be in demand and demonstrated through an analysis of the local labor market. In addition to accreditation, tools such as the O\*NET and the Department of Workforce Connection Centers Bureau of Labor Statistics are reliable tools available to conduct a market analysis. Support for training must be based on the anticipated availability of work based on desired work location and/or the participant's willingness to relocate to a location where there is a demand for the job.

Some training programs lend themselves to self-employment. The counselor needs to review employment options with the participant prior to the start of a training program. Refer to self-employment requirements. The counselor must consider the following:

- the placement rate of graduates;
- the time required for completion;
- the costs, including travel, room, board, and/or other expenses associated with the training;
- the availability of comparable benefits and/or other funding sources; and
- graduation rates.

It is the counselor's responsibility to explore, research, and counsel the participant on the participant's responsibility for costs, loan repayments, etc. to make an informed choice resulting in making a responsible decision.

**9.2.12.4.2 Out-of-State Training.** Out-of-state training may be supported if:

- the course of study is not available in the State of New Mexico, does not meet accreditation standards, or is not fully accessible; or
- the financial assistance available will make the program less costly than an in-state program.

Participants who desire an out-of-state school strictly for reasons of personal choice may be supported at the same level at which they would be supported in attending a comparable in-state program. The participant will be responsible to make up the difference in overall training costs, including room, board, meal plans, books, and supplies, after applying financial aid. To the extent necessary, courtesy counseling should be arranged through the other state's DVR agency where the participant will be attending school. This may be helpful in coordinating special services or financial aid. When it is determined that out-of-state training is the best option, the cost of one round trip per academic school year may be approved. Other travel, such as for holidays, will not be provided. Applying the Participant Financial Contribution is required.

#### **9.2.12.4.3 Correspondence Learning and Online or Virtual Learning.**

Correspondence or distance learning is education obtained remotely that aims to deliver education using various technology to students who are not physically on-site. For this, the participant must demonstrate the ability to be self-disciplined for a nonstructured classroom and be proficient in the use of the relevant technology.

The counselor must verify the participant's proficiency in the use of the required technology, so a technology evaluation may be required. Additionally, the counselor must assess the participant's ability to complete coursework successfully and in a timely manner, which would require initiative and self-discipline. Initiative and self-discipline could be demonstrated by the participant's attending scheduled appointments on time and following through with the counselor's requests, including such things as completing homework assignments.

Consideration to determine whether correspondence, online, or virtual learning is a viable option will require the VR counselor to assess the overall costs of the program. The counselor should also explore whether there are suitable alternatives. Considerations, including cost and comparable benefits as they relate to agency policy, must be taken into account. The school must be accredited.

**9.2.12.5 Student Support Services.** Special needs related to the disability shall be assessed prior to initiating the training program. The counselor shall consider issues related to accessibility, including assistive technology; the need for readers, interpreters, notetakers, tutoring, recorders, or other reasonable accommodations; reliable transportation; and attendant care or other medical needs. These services should be coordinated through the special services office on campus whenever possible. Comparable services must be accessed prior to the DVR's paying for the service. Counselors are responsible for providing the participant with the contact information about student support services and ensuring that the participant has accessed services.

**9.2.12.5.1 Academic Remediation.** Academic remediation may be provided to:

- upgrade academic skills to the level needed to achieve the vocational goal.
- prepare the participant for further training.
- teach the participant specific skills needed for a job, such as recognizing selected words, measuring, and making change.

Academic remediation should only be provided to the extent necessary for achieving a goal. Services may be provided through adult basic education centers, a rehabilitation facility, workforce centers, a private tutor, or some other learning center. Tuition, fees, books, supplies, and/or other materials may be provided in addition to the training.

When the participant has inadequate academic skills for the formal training program being contemplated, the counselor should first attempt to upgrade these skills to avoid failure in the program. Delaying the training program to provide academic remediation is advisable if this delay will help ensure success and give the participant and the counselor an indication of how the participant will perform in a classroom setting.

**9.2.12.5.2 Requirements for Academic Remediation.** Prior to providing such training, the counselor shall have an assessment of the participant's current level of functioning. The IPE shall specify the proficiency to which the participant will be trained (usually a grade level in reading or math). This should correspond to the level needed for the occupation or training that the participant will enter (e.g., reading at the seventh-grade level for the cosmetology exam). Refer to O\*NET for reasoning, math, and language requirements.

If ongoing remediation is required for continued participation, the counselor must continually assess, in consultation with the participant, ongoing progress and determine whether further remediation services are justified. For example, if there is demonstrated evidence of progress, further remediation may be considered. In other instances, it may be appropriate to discontinue remediation services when there is no evidence of improvement or further improvement towards their goal. This will require a reevaluation of the employment goal and further career exploration.

**9.2.12.5.3 Private Tutorial Services.** Private tutorial services may be provided if this is the best method to satisfy the participant's individual needs. These services are generally used when:

- academic remediation programs are not available in the community.
- the participant needs to learn some selected academic skills that could be taught much faster through a tutor on a one-to-one basis than in a classroom. This may be related to medical maintenance of a disability, use of special tools or adaptive

equipment, or skills related to a specific job for which formal training may not be available.

- tutoring may be considered appropriate in situations in which a participant is in jeopardy of failing the coursework supported in an IPE.

The tutor should be given specific objectives on which to work and report periodically to the counselor on progress. The frequency of progress reports will depend on the length and intensity of the training. The tutor must be qualified in the area of expertise and provide documentation attesting to this (i.e., a résumé and/or academic transcripts).

**9.2.12.6 Comparable Services and Benefits.** Sufficient planning time is necessary to ensure that all training guidelines are completed prior to the creation of an Individualized Plan for Employment (IPE) that supports a training program (or programs). The VR counselor must obtain documents regarding the financial aid status of the participant prior to developing the IPE. The financial-aid award letter (FAFSA) must be obtained from the participant prior to the onset of the training program. Awarded funds from financial aid, or grants (i.e. NM Lottery, NM opportunity scholarships, funding from core work-force partners such as Department of Workforce Solutions) must be incorporated into the IPE. The VR counselor is responsible for calculating the correct agency funding support after considering the financial aid available. The financial aid fund amounts must be deducted from the overall cost of the training program(s), and the VR counselor should calculate the DVR's funding support appropriately based on this information. Federal and state grant funding must be applied to training costs prior to using DVR funds.

Continuation of DVR funding for a training program will only be approved after the VR counselor has verified successful completion of a semester, or after a progress report verified by school staff in written form is received, and financial-aid status has been resolved through the receipt of an approval letter or a denial letter. In many cases, the VR counselor will need to meet with the participant to complete an IPE amendment to address any changes in the plan and to recalculate financial support from the DVR after considering financial aid and the awarded funding amount(s).

If the participant owes a refund or is in default, he or she must make the necessary arrangements with the postsecondary institution to clear the default status prior to receiving any further DVR financial assistance. Documentation is required for the electronic case file. Family contributions identified on the FAFSA report should be considered as comparable services and benefits to the participant.

Prior to the DVR's authorizing services, all participants in applicable programs must:

- apply for the Pell Grant, and provide FAFSA documentation to be filed in the electronic case record prior to the counselor's authorizing financial aid for tuition and books.
- demonstrate and record efforts to secure grant assistance, in whole or in part, from other sources to pay for the training.
- provide documentation that a Pell Grant application has been denied before payment is authorized for a subsequent semester.
- provide written confirmation of any notice of a financial award.

If the family refuses to participate in costs, the DVR will only provide the core VR services.

**9.2.12.7 Participant Financial Contribution.** The Participant Financial Contribution must be applied for academic support in accordance with the Participant Financial Contribution policy. Any type of student aid that contains a repayment requirement would be considered neither a grant nor comparable benefit or service. The participant cannot be required to apply for a student loan as a condition for receiving services. The participant may exercise the option of obtaining a loan to further support his or her program.

**9.2.12.8 Informed Choice.** To facilitate informed choice related to academic training, the counselor should consider the participant's potential for maximizing meaningful employment. The counselor must assess factors related to the participant's strengths, resources, priorities, concerns, abilities, and capabilities. If the assessment reveals that a certain level of academic training is necessary to achieve meaningful employment and that the applicant can clearly meet his or her potential, then that level of training should be supported.

#### **9.2.12.9 On-the-Job Training.**

**9.2.12.9.1 Definition.** On-the-job training is any training activity or series of training activities provided in a real-world work situation by an individual, a group of individuals, or employees for the purpose of developing a job skill and related work experiences. Typically, this is an appropriate, and in many cases, a preferred method for helping a participant to acquire training by placement in a setting that emphasizes learning by doing.

**9.2.12.9.2 Scope.** On-the-job (OJT) training includes both formal and informal training activities for the purpose of acquiring skills specific to a particular job or occupation. A participant may be considered as an OJT placement for the DVR's purposes if the participant's program falls within the definition of this section. The counselor, however, must also consider the requirements of the Fair Labor Standards Act and U.S. Department of Labor regulations regarding definitions of "student learners," "apprentices," "learners," and other "trainees," as distinguished from an

“employee,” to determine whether a participant placed in an OJT must be paid training stipends or must be paid wages.

**9.2.12.9.3 Guidelines and Considerations.** The following factors must be considered prior to providing on-the-job training:

- The counselor should meet with the employer to discuss the participant’s current skill level and identify training needs.
- It is appropriate in many cases to obtain a one-week, two-week, or 30-day on-the-job assessment of the participant’s training needs once a suitable training site has been identified. The counselor should explain to the employer and the participant the purpose of the assessment and arrange for a face-to-face meeting upon its completion to establish terms for the OJT.
- The duration of an OJT should be based upon the standard vocational preparation (SVP) available in the O\*NET online help. Adjustments to the OJT duration may be made by taking into account the participant’s functional limitations and the circumstances of the training situation.
- The individual or entity providing the training at the job site should possess the requisite knowledge, skills, and ability to train the participant.
- There should be in place the necessary training materials and resources, including space, tools, equipment, accessible facilities, and working conditions conducive to learning and developing skills.
- On-the-job training should enable trainees to acquire the skills and the level of proficiency necessary for entry-level employment in that particular field or occupation.
- The employer or individual providing the training should be willing to make appropriate arrangements for the training and agree to provide the DVR with periodic progress reports that demonstrate the mastery of skill gained in the training.
- Comparable services and benefits must be taken into consideration when providing on-the-job training.
- Accident-liability responsibility in case of any accident or injury to the participant while at the work site shall be specified on the OJT Agreement Form.

**9.2.12.9.4 Training vs. Employment.** It is important to acknowledge the distinction recognized in federal and State laws and Department of Labor (DOL) regulations between what constitutes training and what constitutes employment. The counselor must determine whether a participant is a trainee or an employee according to DOL regulations. Training stipends must be paid to a trainee; wages must be paid to employees. A participant is considered a trainee when all of the following conditions exist. A participant is considered an employee if any of the following conditions is not met:

- The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.

- The training is for the benefit of the trainee or the student(s);
- The trainee or student does not displace regular employees but works under their general supervision.
- The employer who provides the training derives no immediate advantage from the activities of the trainee or student, and on occasion his or her operations may actually be impeded.
- The trainee or student is not necessarily entitled to a job at the conclusion of the training.
- The employer and the trainee or student understand that the trainee or student is not entitled to wages for the time spent in training.

**9.2.12.9.5 Training Stipend.** If a participant meets the above Department of Labor criteria to be considered a trainee, the participant must receive a training stipend if wages are not paid. A stipend is intended to offset the costs associated with participating in the training program and is expected to improve the likelihood of successful placement by increasing motivation or teaching the participant the relationship between work and money received.

**9.2.12.9.6 Wages.** If a participant does not meet the above Department of Labor criteria to be considered a trainee, the participant must be paid wages and afforded benefits commensurate with their contribution to the business. The value of wages paid should be based on the employee's productivity in relation to others doing the same work. Participants who are employees must be paid at least the State minimum wage.

**9.2.12.9.7 Training Fee.** A training fee can be paid if:

- The trainer is paid on the basis of a percentage of participant wages (if applicable). This arrangement is designed to reimburse the trainer for the costs of training the participant. Because the participant's skills are expected to increase over time, the training fee or percent of wages is expected to decrease over time; or
- The trainer is paid a flat fee by the week or month for providing the training. The fee is negotiated between the DVR counselor and the trainer.

**9.2.12.9.8 OJT Training Agreement.** After an OJT training has been arranged, the counselor shall develop an agreement using the On-the-Job Training Agreement form. This agreement should:

- describe the type of business, organization, or agency that provides the training.
- stipulate the length of time involved in the training program.
- indicate and describe the job skills that will be taught to the participant and describe the tasks that the participant will perform as part of the OJT training.
- include an understanding of which party will be responsible for workers' compensation or accident liability.
- indicate the method or manner of compensation and benefits afforded the trainee. These can include wages, a stipend, and/or benefits.
- indicate whether the individual, employer, firm, or organization will be paid a training fee and, if so, indicate the amount.

The agreement shall be signed by the DVR counselor, the participant, the employer, or a designated individual with the authority to honor the terms and conditions of the agreement. A copy of the agreement shall be forwarded to the designated Rehabilitation Services Unit (RSU) staff member following IPE approval. This information will be shared with the loss prevention manager of the DVR. Upon termination of the OJT training, a copy of the completed OJT training agreement and a copy of all completed authorizations pertaining to the training should be forwarded to the designated Rehabilitation Services Unit (RSU) staff member for tracking purposes.

**9.2.12.9.9 Progress Reports.** Monthly progress reports about the training shall be received by the counselor from the trainer. The Progress Report form will be used by the trainer to track any substantial skill development made by the participant. RSU staff will provide the trainer with the Progress Report form for completion.

#### **9.2.12.10 Job-Readiness Training.**

**9.2.12.10.1 Definition.** Job-readiness training teaches the participant appropriate work habits and behaviors in preparation for further vocational or skill training to be encountered in entry-level employment.

**9.2.12.10.2 Prerequisites.** Prior to providing job-readiness training to the participant, the counselor shall assess:

- the work habits and behaviors of the participant.
- specific behavioral indicators of any problem behaviors of the participant. The counselor will note the degree, frequency, or severity of any problem behaviors.

**9.2.12.10.3 Scope.** Job-readiness services include training to help the participant to:

- A. acquire personal habits, attitudes, and skills for effective job functioning.
- B. develop or increase work tolerance, stamina, and concentration on the job.
- C. develop appropriate interpersonal and communication skills with coworkers and supervisors.
- D. acquire job-seeking skills.
- E. learn employer expectations concerning work production (the quality and quantity of work).
- F. learn work practices related to payroll deductions, insurance, timeliness, safety, etc.
- G. learn specific skills, such as counting, measuring, handling money, and using public transportation.

**9.2.12.10.4 Referral.** The development of a job-readiness program shall be done jointly by the counselor, the service provider, and the participant. Intermediate behavioral objectives shall be mutually agreed upon and time frames established for their achievement. These objectives should be established from baseline data collected



in the initial assessment. The agreed-upon objectives, services, and time frames will be stated clearly in the Individualized Plan for Employment (IPE).

**9.2.12.10.5 Monitoring Progress.** Monthly reports of progress shall be obtained from the service provider and must include:

- attendance,
- behavioral indicators of progress on each of the stated objectives,
- negative or positive changes since the last progress report,
- recommendations for changes in the program or services or changes in the time frames for meeting objectives, and
- other information that might be helpful to the counselor.

General statements, such as “participant continues to improve” or “participant is doing better,” are unacceptable as indicators of progress toward stated objectives because they are too vague. Progress from baseline indicators should be stated in measurable terms.

## **9.2.13 Transportation Services**

**9.2.13.1 Scope.** Transportation services are travel and related expenses that are necessary to enable an applicant or a participant to participate in a vocational-rehabilitation service. Transportation is a supported service intended exclusively for the purpose of enabling the participant to participate in and derive the full benefit from other vocational-rehabilitation services. Transportation services include:

- A. Fares or costs associated with public-transit systems, including but not limited to:
  - taxi
  - ride sharing/transportation network company
  - bus
  - airplane
  - train.
- B. Costs associated with the use of private transportation, including but not limited to:
  - gasoline and/or oil for a private automobile
  - payment to a private individual for transportation services .
- C. Short-term rental of a vehicle (i.e., 1–2 weeks) to enable an individual to participate in a planned service in an approved IPE. Rentals should be authorized as a direct payment to the participant, with the participant assuming full responsibility for all liability issues associated with the rental.
- D. Costs associated with the upkeep and maintenance of operating a private vehicle, including but not limited to:
  - automobile insurance
  - automobile maintenance
  - vehicle repairs
  - vehicle registration.
- E. Other incidental costs associated with minor services that are short-term yet necessary to meet a participant’s transportation needs.

F. The DVR will not support the costs associated with ignition-interlock systems.

**9.2.13.2 Guidelines.** The most economical means for transporting the participant will be selected after taking into consideration the participant's needs and limitations. Comparable services and benefits for transportation must be considered and documented in accordance with the Financial Participation Section of this manual. The Participant Financial Statement must be applied in accordance with the terms in the Financial Participation section prior to the DVR's agreeing to provide transportation assistance.

**9.2.13.3 Mileage.** Mileage expenses are permitted when using a private vehicle based on the estimated costs of gasoline as determined by the estimated miles traveled to participate in the planned service. An authorization to the vendors for gasoline is the preferred method for providing this service; however, in those instances in which a vendor is unavailable or it is not feasible to utilize a vendor, an authorization may be issued directly to the participant.

**9.2.13.4 Auto Repair.** Payments for repairs and part replacements for private vehicles may be made in compliance with the agency's purchasing policies and procedures under the following conditions:

- There are no comparable services or benefits available to meet the participant's transportation needs, or the repair of the vehicle is deemed the most economical method for meeting the participant's transportation needs.
- Only those repairs that render the vehicle safe and operable are allowable.
- The cost of the repair does not exceed the value of the vehicle. If the agency's cost for the repair is determined to be higher than the value of the vehicle, as determined by a reputable source, such as NADA or Kelly Blue Book, the DVR will not provide the service. Maintenance, such as for tires and batteries, is not applied to the total value of the vehicle.
- If the overall condition of the vehicle indicates a need for constant repair or excessive maintenance and the aggregate costs of the repairs exceed value of the vehicle, the DVR will not provide the service.
- The DVR will support the most economical option for auto parts when this service is considered and approved in an IPE.

## **9.2.14 Verification of Ownership**

Verification of participant ownership of the vehicle (such as registration or title) will be submitted. If the vehicle is owned by a family member, the family member will provide a statement agreeing to repair the vehicle as needed.

**9.2.14.1 Vehicle-Modification Policy Statement and Purpose.** The New Mexico Division of Vocational Rehabilitation (DVR) will modify a vehicle for a participant if the Vocational Rehabilitation (VR) counselor can demonstrate that:

- it is required for the participant to achieve or maintain employment;

- it is a necessary component of an Individualized Plan for Employment (IPE);
- such a demonstration is based on the policy and procedures as presented in this Manual of Operating Procedures (MOP) section.

To receive vehicle-modification services as part of an IPE, the Participant Financial Statement must be completed.

#### **9.2.14.2 Definitions.**

**9.2.14.2.1 Nonstructural Modification.** A nonstructural modification does not require a vehicle to be structurally altered, nor does it require any major overhaul of the driving compartment or booster systems to activate the brake, accelerator, and/or steering systems. Such nonstructural modifications include, but are not limited to:

- hand controls;
- wheelchair carriers or truck loaders;
- pedal blocks;
- left-foot brake and accelerator pedals;
- extensions on the turn signal and/or the shift lever; and
- an electric parking brake.

**9.2.14.2.2 Structural Modification.** A structural modification is a major modification (usually to a van) that requires specialized expertise and specific knowledge of a participant's functional ability to drive. Structural modifications may require major overhauls of the driving compartment or booster systems to activate the brake, accelerator, and/or steering systems. Structural modifications may include but are not limited to:

- wheelchair lifts;
- reduced-effort hand-control systems;
- raised roofs;
- lowered floors; and
- console adaptations to access dashboard controls, etc.

Structural modifications require input from consultants with engineering expertise acting on the recommendation of a driving evaluation. They are usually permanent modifications to the vehicle that typically cannot be transferred to another vehicle.

**9.2.14.3 Scope of Services.** Motor-vehicle modifications are rehabilitation-technology services that may be provided only when necessary to enable an eligible participant to achieve a viable employment outcome. Modifications will not be provided for Trial Work Experience (TWE) participants. Motor-vehicle-modification services shall be provided only as part of an approved IPE.

Evaluating the need for modifications: Prior to initiating an evaluation for motor-vehicle modifications, the counselor must explore other options to transport a participant for the intended purpose. When the following transportation options are available and suitable, the agency shall not authorize a modification to a vehicle when:

- A. the participant owns or uses—as a driver or passenger—another vehicle that meets their transportation needs.

B. other modes of transportation or solutions are readily available, such as:

- taxicabs, carpools, paid coworkers, volunteers, or attendants;
- para-transit (an alternative mode of flexible public transportation that does not follow fixed routes or schedules), accessible public transit, or other community services;
- relocating the participant, if such a move is cost-effective, to where their specialized needs may be met. For example, the participant relocates from an area outside the public transit and para-transit range to a location in the same city where accessible public transit and para-transit is available and suited to their needs.
- telecommuting when this is an appropriate vocational avenue.

Participants who request motor-vehicle-modification services that will enable them to drive shall be required to undergo an evaluation by a certified driver rehabilitation specialist to determine:

- functional capacity to drive;
- need for motor-vehicle modification;
- type of vehicle that would be appropriate;
- type and extent of modification required.

The DVR will assume the costs of such an evaluation.

Participants who request motor-vehicle-modification services to enable them to ride as a passenger shall be required to undergo an evaluation by a certified driver rehabilitation specialist to determine the need for any motor-vehicle modification, the type of vehicle that would be appropriate, and the type and extent of modification required. The DVR will assume the costs of such an evaluation.

**9.2.14.3.1 When Not to Modify.** The DVR will not provide or purchase:

- modifications to a vehicle for the purpose of enabling a participant to drive who, in the opinion of a consultant with expertise in the field (e.g., a certified driving evaluator or a physician), is not capable of operating a motor vehicle with reasonable safety due to the limitations of the disability.
- structural modifications to a van, with or without existing modifications, if an automobile would satisfy the participant's transportation needs. However, nonstructural modifications, such as hand controls, steering knobs, or left-foot accelerator extensions, may be considered if van transportation is preferred and no extensive structural modifications are required to make the van accessible to the participant with a disability.

The DVR will not provide structural modifications to a vehicle if the following conditions exist:

- The vehicle is more than three (3) years old and has more than 40,000 miles on the odometer unless a qualified mechanic inspects the vehicle's power train, brakes, electrical system, body, and safety features and certifies in writing that the inspected items are in good condition.
- A vehicle that meets the standards in the above paragraph and has structural modifications that meets the participant's already installed needs is available for purchase by the participant. In an instance where some but not all necessary

modifications are installed, the DVR may consider assisting the participant in obtaining the additional and necessary modifications when all other MOP criteria are met.

**9.2.14.3.2 Participant Responsibilities.** The participant is responsible for regular maintenance and repair of the modified vehicle, including all modifications. The participant is responsible for maintaining adequate ongoing insurance coverage of the modified vehicle. This includes all modifications and will usually require an additional insurance rider. The DVR is not responsible for repairing or replacing vehicle modifications damaged due to an accident, vandalism, or fire.

**Allowable Modifications:** The DVR may assist in installing nonstructural or structural modifications as described in the Definitions section above that is necessary for the participant to achieve or maintain a suitable employment outcome.

**9.2.14.3.3 Modifications that are Not Covered.** The agency will not provide standard equipment or customarily optional equipment that is ordinarily available when an individual purchases a new vehicle. Such equipment includes but is not limited to:

- automatic transmission,
- power steering,
- power brakes,
- automatic speed control,
- air conditioning,
- heavy-duty alternators, and
- power windows.

The DVR will not purchase or pay for the installation of nonessential equipment or options, such as:

- entertainment systems,
- burglar-alarm systems,
- insulation, and
- tinted windows.

**9.2.14.4 Procedure for Providing Motor-Vehicle Modifications.** The DVR procedures follow the process for all referrals, such as initial interview, adequate evaluation to determine eligibility, and the nature and scope of services.

A. Upon notification of the participant's interest in vehicle modification, the counselor will review this MOP section with the participant and provide the participant with a copy of the MOP section regarding vehicle modification.

B. If a participant has purchased a vehicle prior to the referral or at any point after the referral, the counselor must explain that such does not guarantee that the DVR will participate, in part or in whole, in the cost of modifications.

C. The case record must:

- reflect evidence of adequate vocational evaluation and exploration, along with counseling and guidance, that provides the rationale for the participant's employment goal and required support services,

- reflect evidence of satisfactory progress toward achieving an employment outcome if the participant has already been receiving services under an IPE, and
- contain an assessment of alternatives that could be used, if appropriate, to meet the participant's transportation needs.

If there is a question about the participant's basic ability to operate a vehicle, written certification of the participant's ability to drive shall be obtained from appropriate medical or psychological professionals prior to authorization of an evaluation by a certified driver rehabilitation specialist.

**9.2.14.5 Procedure for Evaluating Vehicle-Modification Needs.** At this point, the counselor may evaluate the participant's vehicle-modification needs in preparation for developing the IPE.

- A. The counselor must explain that proceeding with the evaluations does not guarantee that the DVR will participate, in part or in whole, in the cost of modifications.
- B. The participant must provide proof of a driver's license or the ability to obtain a permit if the participant will be the driver of the vehicle.
- C. Driver Evaluation: A report from a driver evaluator certified by the Association for Driver Rehabilitation Specialists must document the participant's ability to drive safely and, as necessary, should include specifications for adaptive driving equipment and vehicle modifications. The only exception to this procedure is when replacement equipment is requested, and the participant is a licensed driver whose driving ability is unchanged and already using comparable adaptive-driving equipment.
- D. Passenger Evaluation: A participant who requests vehicle-modification services to enable them to ride as a passenger must undergo an evaluation to determine the need for the modifications, the type of vehicle that would be appropriate, and the type and extent of modification(s) required. *Note.* The DVR reserves the right to seek further consultation on the received recommendations.
- E. Because the DVR reserves the right to limit by year, make, or model which vehicles it will consider for modification, the DVR must be involved in selecting the vehicle to be structurally modified.
- F. If the participant does not own the motor vehicle under consideration, the counselor must obtain a notarized statement from the owner (who must be a family member) that permits the participant to drive or otherwise use the vehicle for at least ten (10) years if structurally modified and three (3) years if not structurally modified. The owner must also provide written permission to proceed with the proposed modification and proof of ownership, such as a Title Certificate, Copy of a Bank Loan. If there is a lender or mortgagor, clearance from that party must also be obtained in writing.
- G. The specifications for adaptive-driving equipment and vehicle modification shall be submitted to a vendor listed with the National Mobility Equipment Dealers Association (NMEDA) and to the participant to obtain documentation of cost.

- H. When necessary, document that the vendor has completed a site visit to assess the participant's needs and to conduct any necessary measurements to accurately determine cost.

**9.2.14.6 Procedure for Program Manager Review.** The program manager shall review all required documentation and provide the counselor with a written decision if the request exceeds that counselor's level of independent approval. *Note.* The field operations director is available for consultation in cases of high cost or unusual circumstances.

After receiving approval, the counselor and the participant may develop an IPE for implementing approved motor-vehicle modifications. The IPE shall stipulate the amount of the cost of motor-vehicle modifications less any manufacturer's rebate and contribution by the participant. The IPE shall include planning for the long-term transportation needs of the participant. Such planning will consist of participant savings planning for a replacement vehicle, use of benefits such as PASS plans, Impairment-Related Work Expenses (IRWE), and discussion of loans or other financial programs available.

The program manager and the Field Office Director (FOD) are available to the counselor on a consultant basis to review the proposed plan and attempt to resolve any issues about modifying a vehicle that may develop while developing an IPE.

**9.2.14.7 Procedure for Participant Satisfaction.** Upon completion of the modification(s), the counselor shall consult with the participant to ascertain whether services have been completed to their satisfaction. If the participant is dissatisfied with the work, the counselor shall discuss the areas of dissatisfaction with the vendor and determine whether services have been delivered to the DVR's satisfaction in accordance with the authorization and any arrangements or agreements made between the vendor and the DVR. Once it is determined that the service has been provided satisfactorily, the DVR will process the vendor's invoice for payment. The participant may also use the National Mobility Equipment Dealers Association (NMEDA) mediation process to resolve dissatisfaction with the vendor.

**9.2.14.8 Requirement for Driver Training.** In all cases where the DVR provides motor-vehicle modifications to a participant who is also the driver, the counselor will ensure that proper training is provided concurrently with the motor-vehicle modifications. Driver training is to be provided by a certified driver rehabilitation specialist familiar with the relevant motor-vehicle technologies. The only exception to this procedure occurs when replacement equipment is provided, and the participant is a licensed driver already using the adaptive driving equipment provided.

**9.2.14.9 Transfer of Equipment.** Upon completing a rehabilitation program, all vehicle modifications and equipment belong to the participant. If the participant does not achieve a successful employment outcome, that participant is subject to having some or all components of the modifications reclaimed by the DVR. Factors to be considered by the counselor in determining what equipment may be reclaimed are:

- the transferability of the equipment (i.e., a determination of whether another participant could use the equipment or whether the equipment was customized for the original participant to the degree that transferability is impractical);
- the cost associated with the removal of the equipment from the vehicle
- a determination of whether the equipment would be reusable if removed from the vehicle.

9.2.14.10 Service Animals. Refers to the purchase and training for service animal requests. The guidance provides information on the appropriate use of federal grant funds by the New Mexico Division of Vocational Rehabilitation (NMDVR) for the procurement, training, and maintenance of service animals. The funds should be used strictly in accordance with federal guidelines to ensure that individuals with disabilities receive the necessary support.

**Service Animals-** “Service animal” means any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals are working animals, not pets. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. *Americans with Disabilities Act of 1990, Titles II and III, as amended.* (ADA). See <https://www.ada.gov/resources/service-animals-2010-requirements>.

Pets, emotional support animals, comfort animals, and therapy animals are not service animals as defined by the ADA because they are not trained to perform a task, or tasks directly related to an individual's disability.

NMDVR **will only** support the cost of service animal training from an official service dog training program offered by an organization accredited by the Assistance Dogs International or the International Guide Dog Federation or both. NMDVR may provide funding support of a service animal training **ONLY IF** the service animal is necessary to allow the participant to participate in approved services identified in an Individualized Plan for Employment (IPE) in order to reach the vocational goal.

Participant Financial Statement is applied, and funding restrictions are implemented.

NMDVR **SHALL NOT** support funding for

- the purchase of a service animal.
- the purchase of emotional support animals or training for emotional support animals.
- support funding of dog training conducted prior to an approved IPE. This includes signed contracts or agreements with an entity providing service dogs or service dog training where an estimated cost or associated costs have been agreed to by the individual and the dog training entity prior to NMDVR involvement.
- support funding the costs of yearly testing for the animal, medical service animal clearance, veterinary costs, medical costs, boarding costs, animal food costs, animal equipment, transportation costs associated with the animal, insurance costs, housing deposit fees for the service animal, or euthanasia costs.
- support funding service animal training if the animal has preexisting conditions or is or becomes medically unfit to be a service animal.
- support repeat funding for service dog training. NMDVR may only support the service animal



training once per lifetime of the animal.

*Note: Reference PPI 24-01*

## **10. Direct Authorizations and Payments**

### **10.1 Purpose**

The purpose of this policy and procedure is to provide guidelines for issuing authorizations and payments directly to participants who receive services from the DVR. As a recipient of federal funds, the DVR must have procedures to administer the VR program and carry out all required functions properly and efficiently.

#### **34 CFR 361.50(c)(1)**

The State Unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

The DVR is required to have practices in place to track and monitor the expenditures of federal funds. This requirement aims to ensure that DVR funds are expended only in a way that is “reasonable, allowable, allocable, and necessary.” To comply with federal regulatory requirements, the DVR requires the participants to submit receipts or other documentation to substantiate the participant's expenditures. These procedures must enable DVR to ensure accurate financial accountability for the VR program.

The DVR must have fiscal controls in place that enable it to expend and account for the VR funds to such a degree that it can trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements. These procedures ensure accurate financial accountability for the VR program.

34 CFR 361.12 and 34 CFR 80.20(a): A state must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for funds. These methods must include procedures to ensure accurate data collection and financial accountability. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

- permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes; and
- monitor all grant-supported activities, including those performed by the agency's staff, to ensure that federal requirements are satisfied through monitoring these payments and obtaining documentation to verify that VR funds given directly to applicants and participants are indeed for the purpose authorized in the IPE.

### **10.2 Policy**

The policy of the DVR is to act as good stewards of public funds through appropriate oversight and management, adhering to federal purchasing guidelines and

other regulatory requirements, State of New Mexico procurement laws, and purchasing guidelines for purchasing goods or services.

- The policy of the DVR is to allow for direct payments to participants to provide the goods or services that cannot be authorized to a vendor (excluding postsecondary education).
- The policy of the DVR is to use direct authorization as a last resort only after all efforts to secure a vendor have been exhausted.
- The use of direct authorization is an exception to standard practice, not a common practice for providing VR services.
- Prior indebtedness, including mortgage payments, credit card payments, and previous medical or other bills, is the responsibility of the applicant or participant; the NMDVR does not pay for prior indebtedness.
- The purchase of the goods or services incurred prior to signing an Individualized Plan for Employment (IPE) and issuance of an authorization for service is the participant's responsibility and is not reimbursed by the DVR.
- The policy of the NMDVR is that the counselor, Program Manager, or Field Operation Director (FOD) must document in the participant's electronic case file the justification for what necessitates the need for direct payment versus the use of a vendor, regardless of the category of the service or good procured.
- The policy of the NMDVR is not to issue direct payment to participants for tuition and fees for public or private training entities.

### **10.3 Direct Payment**

When providing services directly to the participant in any status, clear justification for all services issued must be documented in the electronic Case Management System. Identify why the amounts expended for goods or services are necessary and reasonable and why services are issued directly to the participant rather than a vendor.

### **10.4 Guidelines for Developing an IPE**

The IPE shall be developed and implemented in a manner that affords the eligible individual, or as appropriate, the individual's representative, the opportunity to exercise informed choice in selecting VR services to be provided under the plan and the entity that will provide the services. The methods used to procure the services must comply with State procurement requirements. The VR counselor should:

- follow all DVR procedures;
- evaluate the availability of comparable services and benefits;

complete the Plan Data page in the Case-Management System, providing the following information: a justification for services that are needed to achieve an employment outcome for the selected employment goal and an identification of services that are needed to achieve the employment goal, including the costs of

services, the responsible entities (including the DVR and the participant), comparable benefits, or other sources for various costs;

- ensure that the Plan Data page in the Case-Management System provides a comment section (or comments sections); this page must justify any service(s) planned and provide details about the arrangements and agreements made between the participant and the DVR about the provision of services;
- prepare the appropriate documents that outline DVR and participant responsibilities in achieving the employment outcome and in securing comparable services and benefits;
- inform the applicant or participant of the criteria that will be used to evaluate their progress toward achieving the employment goal.

To achieve the employment outcome, rehabilitation services identified in the IPE must be needed. They must be provided in the most integrated setting possible and consistent with the participant's informed choice.

### **10.5 The VR Counselor's Responsibilities for Direct Payment**

The VR counselor's responsibility is to provide counseling and guidance to participants regarding the appropriate use of funds, providing receipts or other required documentation for the use of funds, and the consequences for abusing funds for services described in the IPE.

The participant should agree to the following statements based on the type of service provided: Examples:

1. "I will comply with the client responsibilities towards transportation assistance and maintain reliable transportation, as agreed between my counselor and myself. If I fail to comply with client responsibilities, I understand that transportation may be discontinued, and I will be required to reimburse the agency for misspent funds. Receipts and mileage logs are required by the seventh day of each month to receive continued monetary support for this service in a timely manner.
2. "For a one-time purchase, I will provide receipts upon completion of the purchase. I am responsible for any dollar amount over the approved amount detailed in the IPE. Any amount I am responsible for will be paid to the vendor at the time of purchase."
3. "I am responsible for misspent funds outside what is agreed to in the Individualized Plan for Employment (IPE). I will reimburse the DVR for the misused fund amount." (If the participant cannot repay the DVR, the VR counselor must determine where the amount will be deducted or recouped from another service, if available.)

4. "I will affirm that the funds received were expended for the intended purpose by providing receipts or that the funds were returned to the DVR."

Clear justification for all services, including why the amounts expended for goods and services are necessary and reasonable and why funds are being issued directly to the participant rather than to a vendor, must be case noted in the electronic Case-Management System.

Each VR counselor is responsible for ensuring that funds provided directly to participants are spent as intended. For misuse of funds outside what was approved in the IPE or for missing receipts, the VR counselor must take action by recouping the amount misused or the missing receipts from any future monetary service or requesting that the participant pay back these funds with a money order made out to the New Mexico Division of Vocational Rehabilitation.

### **10.6 Transportation Assistance**

The VR counselor should complete a Transportation Calculation Worksheet (TCW) and reference the worksheet in the IPE. The following information should be included: the time frame in month(s), the amount not to be exceeded per time frame or month, the total amount not to be exceeded, and the frequency of the payments, as appropriate. For example, for the purchase of fuel for the month(s) (to be determined based on the Transportation Calculation Worksheet) to participate in a job search, the funds supported per month and the total amount should be specified, as should clear justification of why a vendor is not being used, in which case, funds will be provided directly to the participant, and the participant will provide receipts and a mileage log by the seventh day of each month.

### **10.7 On-the-Job (OJT) Training**

For an OJT training stipend, the VR counselor must include a justification in the IPE, including the good or service necessary for the training, the quantity of each good or service, the cost per each quantity, the time frame (in month or months), the amount not to be exceeded per time frame or month, the total amount not to be exceeded, or the frequency of the payments, as appropriate.

*Note.* Refer to the On-the-Job Training PPI.

### **10.8 Initiating One-Time and Recurring Direct Authorization or Payment**

When creating an authorization during Service status, the designated field staff member reviews the approved IPE to ensure that the goods or services are documented in the signed IPE. The VR tech or secretary creates the authorization using

the approved standardized content of the DVR or the Rehabilitation Services Unit (RSU). This content should include the following:

- a brief description of the good or service;
- the IPE # and the service #;
- the Case Management System signature start date; and
- the expiration date of the authorization;
- verification details, which must be aligned with the purchase.

The VR counselor signs and dates the authorization. The participant signs the authorization. The VR counselor certifies the authorization to proceed with the payment request. The participant uses the funds authorized for the purposes outlined in the IPE. The participant provides a receipt (or receipts) for the direct payment(s).

*Note.* For monthly recurring payments, the participant must submit the previous month's receipts for service(s) by the seventh day of each month.

The VR tech or secretary reconciles the receipts obtained with the authorization to ensure the appropriate use of funds by verifying that the:

- ;
- Verification documentation service dates align with the Counselor's Signature and Date on the Authorization.
  - The VR counselor signs and dates the authorization before the start date of the service.
  - Participant uses the funds authorized for the purposes outlined in the IPE and verifies receipts are for the purpose of the authorized good(s) and/or service(s) identified in the IPE and the authorization; total amount of the good(s) or service(s) purchased equals or does not exceed the amount authorized and that there are no other issues that are unusual or that may present an audit finding (for example, all the receipts meet the requirements specified above, but all are dated on the same day).

*Note.* Original receipts provided by a participant for a direct authorization are maintained in the electronic case file. For the first payment of a recurring series, the payment request is submitted to the Accounts Payable Unit upon completion of payment packet. . For monthly payments, the payment request is submitted to the Accounts Payable Unit by the 14<sup>th</sup> day of the month.

The participant provides a receipt (or receipts) for a previous direct payment by the seventh day of the following month if it is a monthly direct payment unless the payment was a Trial Work Experience (TWE), a Work Adjustment Training , or an OJT training stipend.

## 10.9 Processing Direct Recurring Payments

Processing a direct recurring payment is consistent with a direct payment, except for the first two payments. Designated field staff members process the first two payments for a direct recurring authorization in good faith, without receipt(s).

*Note.* In the rare event of a lost or illegible receipt, the DVR may accept a notarized affidavit approved by the deputy director of the Rehabilitation Services Unit (RSU) that fully accounts for the expenditures in sufficient detail as a substitute for submitting a receipt.

The VR counselor or the designated field staff member documents in a case note every effort made to obtain the required receipt(s) from the participant within the time frame identified in the language in the authorization and the IPE.

## 10.10 Processing Direct Payments

The designated field staff member initiates the direct payment in the Case-Management System and completes a payment-request packet in SharePoint, including the signed direct authorization. If previous payment receipts are not received from the participant within the time frame identified in the language in the authorization and the IPE, subsequent payments will not be made.

The designated field staff member verifies that good(s) or service(s) are received as authorized through a receipt, an invoice, or a statement of service for the previous month. Upon verification, the VR counselor signs and dates the certification of receipt of service on the authorization prior to the following month's warrant request.

- The participant provides a receipt (or receipts) for a previous direct payment by the seventh day of the following month.
- The designated field staff member reconciles the receipts and notifies the VR counselor of any adjustment for the following payment request.
- The Field Operations Specialist (FOS) or designee enters the adjusted payment request (if applicable) into the Case-Management System and submits all required documentation to the Accounts Payable (AP) unit.
- The AP unit ensures that the payment request adheres to the authorization and Department of Finance and Administration (DFA) requirements prior to submitting the payment request.

If not all conditions are met:

- The AP unit documents the deficiency and notifies the field operations specialist supervisor.
- If reviewed and accepted by the field operations specialist supervisor, the payment packet will be disseminated to the area field operations specialist for correction.
- The AP unit completes the voucher process and submits the payment request to the DFA within five (5) business days.

### **10.11 Unspent Funds or Recoupment**

The designated field staff member reviews the receipts to ensure that purchases align with the authorization and the IPE. If reimbursement is required and submitted, the designated field staff member completes the Division of Vocational Rehabilitation Deposit Form, attaches the money order, and makes the deposit. The money order must be payable to the New Mexico Division of Vocational Rehabilitation. (The agency's name must be spelled in full on the money order). The designated field staff member documents discrepancies in the case file and informs the VR counselor.

*Note.* For a one-time payment with a discrepancy of five (5) dollars or less, no reimbursement by the participant is required.

### **10.12 Working with Vendors**

The DVR field staff member attempts to identify, recruit, and work with local vendors to accept NMDVR authorizations.

### **10.13 Noncompliance by the Participant**

The DVR requires that Vocational Rehabilitation (VR) applicants or participants spend direct payments only for the intended purpose, return any unspent amount or reimburse DVR for any amounts not spent for the intended purpose or for which receipts are missing. In cases in which the participant fails to use the authorized funds for the intended purpose or fails to submit receipts or mileage logs:

- The VR counselor informs the participant that they are not in compliance with the requirements.
- The VR counselor and the participant negotiate a deadline for submitting the receipts or arranging reimbursement to the DVR with a cashier's check or money order for the full cost of the good(s) or service(s).
- If the participant cannot repay DVR, the VR counselor must determine how to deduct the amount from another service, if possible.

If the participant fails to provide the required documents within the established timeframe, fails to reimburse the full cost of services or goods, or recoupment from another monetary service is not an option, that service will no longer be supported or funded in the IPE. Other services funded by the Agency may also be discontinued at the discretion of the RSU deputy director, and the case could be closed for failure to cooperate.

*Note.* In the rare event of a lost or illegible receipt, the agency may accept a Notarized affidavit approved or signed by the Rehab Services Unit Deputy Director



signed, fully accounting for the expenditures in sufficient detail as a substitute for the receipt submission.

## **11. Transition Services**

Transition services are a coordinated set of activities for a student or youth with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities, leading to competitive integrated employment. Students in receipt of pre-employment-transition services may also receive transition services.

### **11.1 Pre-employment-Transition Services**

#### ***11.1.1 Policy***

The Workforce Innovation and Opportunity Act (WIOA), in section 113, as amended, requires Vocational Rehabilitation (VR) agencies to set aside at least 15% of their federal funds to provide pre-employment-transition services to students with a disability who are eligible or potentially eligible for VR services. Pre-employment law has emphasized granting transition-aged individuals' access to employment and training opportunities that provide them with the skills necessary to compete in the workforce. It is the responsibility of DVR to verify that an individual is a student with a disability prior to receiving pre-employment-transition services. A consent form signed by the parent or guardian and the student must be collected prior to receiving pre-employment-transition services.

#### ***11.1.2 Pre-Employment-Transition Services Description***

The DVR must, in collaboration with the Local Educational Agencies (LEAs) involved, provide or arrange for providing pre-employment-transition services for all students with a disability (as defined in §361.5(c)(51)) who need such services without regard to the type of disability. The VR counselor shall provide or arrange for providing these services for all potentially eligible and eligible students with a disability. Services provided by VR enhance transition services but do not reduce the responsibility of LEAs to comply with federal law and federal regulations, including the Individuals with Disabilities Education Act (IDEA) and Free Appropriate Public Education (FAPE) guidelines. Pre-employment-transition services may be provided and coordinated by the Vocational Rehabilitation (VR) counselor in collaboration with the LEAs involved, or these services may be purchased through another entity and provided within or outside the school setting. Pre-employment-transition services provide an early start for career exploration and experience without any application to the VR program.

#### ***11.1.3 Providing Pre-Employment-Transition Services***

An individual is considered to be a student with a disability for the purposes of pre-employment-transition services if the individual with a disability is:

- in a secondary, postsecondary, or other recognized educational program;  
secondary education includes nontraditional or alternative secondary-education

programs such as homeschooling; the juvenile justice system, Bureau of Indian Affairs educational programs, the School for the Deaf and Hard of Hearing, and the School for the Blind.

- eligible for and is receiving special education or related services under the Individuals with Disabilities Education Act (IDEA) or is a student with a disability for purposes of Section 504; and
- at least 14 years of age but not 21 or older (reference SWD age per IDEA in New Mexico):

The DVR shall provide or arrange for the provision of pre-employment-transition services. All students with a disability of ages 14 through 21 in need of such services who are eligible or potentially eligible for VR under this title shall receive pre-employment-transition services. Applying for Vocational Rehabilitation (VR) services is not required. To receive pre-employment transition services, the DVR must obtain a signed pre-employment transition consent form. If a student does not have a 504 plan or an IEP, the counselor may provide pre-employment-transition services if other documentation of the disability is provided and verified on the pre-employment transition consent form. Other options for documentation include medical documentation, a review of school records, a statement from school staff, case notes documenting counselor observations, or a letter that verifies that the student receives Supplemental Security Income benefits due to the student's disability. (Survivor's benefits do not apply.) along with the signed pre-employment transition consent form.

The VR counselor will assist the student with a disability to determine whether the student wants to apply for VR services. If the student or their parent or guardian decides to apply for VR services, the VR counselor will begin the VR process with the student or their parent or guardian and open a case in the Case-Management System. Development of the IPE must include all Pre-Employment services the Student, Parent and Counselor will utilize under service provisions. If the student and their parent or guardian does not wish to apply for services but wants to receive pre-employment-transition services, the VR counselor must obtain a signed pre-employment transition consent form prior to providing pre-employment-transition services. Once the form is received, the VR counselor will guide the student through the pre-employment-transition-services process and track the actual services provided. Should the student decide to apply for VR services later, the VR counselor will initiate the VR process.

## **11.2 Pre-Employment-Transition Services: Required Activities**

Pre-employment-transition services must include, as appropriate to the needs of the person, the following required activities:

- job-exploration counseling,
- work-based learning experiences and counseling on opportunities for enrollment in comprehensive transition or postsecondary education programs at institutions of higher education,

- work-based learning experiences,
- workplace-readiness training, and
- instruction in self-advocacy (including instruction in person-centered planning).

### **11.2.2 Job-Exploration Counseling**

Job-exploration counseling or career counseling) can include various professional activities that help individuals with career-related issues. Vocational Rehabilitation (VR) counselors work with youth seeking career options. Career counseling is also offered in various settings, including in groups and individually, in person, or virtually.

Counseling about exploring job options is intended to foster motivation, consideration of opportunities, and informed decision-making. Discussing real-world activities helps ensure students recognize the relevance of high-school education and post-secondary learning to their futures, whether in college or the workplace. Job-exploration counseling activities can be done in conjunction with private, for-profit, public, or nonprofit businesses in the community and through web-based resources.

Job-exploration counseling may be provided individually or in group settings. Services may be provided in school or the community. Examples of job exploration may include the following:

- administering a vocational-interest inventory and discussing the results,
- discussing the labor market,
- reviewing in-demand industries and occupations, and
- identifying career pathways of interest to students.

Students may participate in several pre-employment-transition or transition services through VR or education. Discussion or counseling on the results of some of these activities can help to identify viable career options or to solidify careers that a student may want to explore further.

### **11.2.3 Work-Based Learning Experiences (WBLE)**

Work-based learning is an educational approach or instructional methodology that uses the workplace or real work to provide students with knowledge and skills that will help them connect school experiences to real-life work activities and future career opportunities. It is essential that direct employer or community involvement be a component of the Worked-Based Learning Experiences (WBLE) to ensure in-depth student engagement. These opportunities are meant to engage and motivate students, as well as to augment their learning process. These WBLE opportunities can be done with private, public, for-profit, or nonprofit businesses and organizations in the community or through web-based resources. Work-based learning requires in-depth engagement of youth and evaluating acquired skills relevant to work. WBLEs may

include in-school or after-school opportunities and experience outside the traditional school setting (including internships) that is provided in an integrated environment to the maximum extent possible.

Work-based learning requires in-depth engagement of youth with oversight and evaluation of acquired work-related skills by identified staff. The WBLE must be provided in an integrated setting in the community. WBLEs may include individual or group services. When paid WBLEs are provided, the wages will be paid at no less than the minimum wage.

The DVR's On-the-Job training form must be used for students who participate in On-the-Job training. On-the-job program policy instructions must be followed. Each participating student should be covered under liability insurance provided by the school, the DVR, or the service provider.

The VR agency shall exhaust all opportunities for WBLEs in integrated settings before placing an individual in a nonintegrated setting. Funds for WBLEs must be used solely for costs incurred in providing re-Employment-transition services for the benefit of a student with a disability. The following are broad examples of costs that might be allowable:

- interpreters, reader services, and accessible informational materials necessary to ensure equal access, as required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act;
- VR services under an IPE that are necessary for a student to participate in any pre-employment-transition services, including WBLEs;
- fees charged by the employer for costs incurred in providing the WBLE, such as printing additional informational materials, providing uniforms, providing staff or trainers, or incurring other costs by the employer in providing WBLEs to unindividualized students.

Community Rehabilitation Programs (CRPs) and comparable benefits are applicable and should be used appropriately.

#### **11.2.4 Counseling on Opportunities for Enrollment in Comprehensive Transition or Postsecondary Education Programs at Institutions of Higher Education**

Maximum flexibility in career decision-making is important in the early phases of planning postsecondary education. This includes awareness of the wide range of career pathway options and labor-market realities and projections. Such counseling may be provided on an individual or a group basis. Some examples include.

- advising students and parents or representatives on academic curricula;
- providing information about college applications and admissions processes;
- completing the Free Application for Federal Student Aid (FAFSA);

- providing resources that may be used to support individual student success in education and training, which could include disability-support services;
- enrolling in comprehensive transition or postsecondary educational programs at institutions of higher education, including gaining information on course offerings;
- exploring career options, as well as the types of academic and occupational training needed to succeed in the workplace; and
- reviewing postsecondary opportunities associated with specific career fields or pathways.

### **11.2.5 Workplace-Readiness Training**

Workplace-readiness traits include several commonly expected skills employers seek from most employees. Work-readiness skills include abilities and behaviors that are necessary for any job. Work-readiness skills are sometimes called soft skills, employability skills, or job-readiness skills. Acquiring these abilities helps employees interact successfully with supervisors and coworkers. Gaining these skills helps to reinforce the importance of timeliness and to build an understanding of how others perceive us. Employers value employees who can communicate effectively and act professionally. No matter what technical skills a job may require, every job requires good social and interpersonal skills.

Services may be provided on an individual or a group basis. Workplace-readiness training services may be generalized in a classroom or in another group setting to assist students with a disability in developing social skills and independent-living skills necessary to prepare for employment. These services may include instruction and other opportunities to acquire and apply knowledge. These services may be tailored to an individual's needs in a training program provided in an educational or community setting. Examples of skills that may be taught on an individual or a group basis include:

- independent-living skills: hygiene, time management, transportation, nutrition, safety, and appropriate dress;
- communication and interpersonal skills;
- financial literacy;
- understanding employer expectations for punctuality and performance, as well as other soft skills necessary for employment;
- teamwork;
- group orientation and mobility skills (e.g., to access workplace-readiness training or to learn to travel independently); and
- professionalism.

### **11.2.6 Instruction in Self-Advocacy**

Self-advocacy refers to an individual's ability to communicate effectively to convey, negotiate, or assert their interests and desires. Self-determination means that

individuals with a disability have the freedom to plan their own lives, pursue the things necessary to them, and experience the same life opportunities as those available to other people in their communities. It means straightforwardly taking responsibility for communicating one's needs and desires to others. Developing self-advocacy skills should begin at an early age. These skills are necessary in education, the workplace, and community settings. Services can be provided through individualized and generalized classroom opportunities that include:

- conducting informational interviews;
- mentoring with educational staff, including principals, nurses, teachers, or office staff;
- mentoring individuals employed by or volunteering for employers, boards, associations, or organizations in integrated community settings;
- participating in student-leadership activities offered in educational or community settings;
- learning about rights and responsibilities;
- learning how to request accommodations or services and supports needed during the transition from secondary to postsecondary education and employment;
- communicating thoughts, concerns, and needs to prepare for peer-mentoring opportunities with individuals working in the area(s) of interest; and
- learning from events sponsored by local pre-employment-transition educational agencies.

### **11.2.7 Coordinated Activities**

To facilitate successful pre-employment services, VR counselors will collaborate with schools, community, and educational agencies to coordinate activities for students with a disability. Local offices are responsible for fulfilling the designated coordination responsibilities outlined in Section 113 of the Rehabilitation Act and 34 C.F.R. § 361.48 (a) (4.). Pre-employment transition-coordination activities include:

- attending Individualized Education Plan (IEP) meetings when invited;
- working with the local workforce-development boards, one-stop centers, and employers to develop work opportunities may include internships, summer employment, other employment opportunities, and apprenticeships. Pre-employment-transition services are available statewide;
- working with schools to coordinate and ensure the provision of pre-employment-transition services; and
- attending person-centered planning meetings for students with a disability receiving services under Title XIX of the Social Security Act when invited.

### **11.3 Procedures**

In New Mexico, schools are responsible for initiating transition planning at 14 for any student identified with a disability. School faculty and staff specialize in academics, while VR counselors focus on students' vocational future. Including VR early can align

educational needs with the vocational concerns of the student. As counselors are educated on federal and state laws, they can act as an advocate for students and parents.

When invited, counselors must attend Individual Education Plan (IEP) meetings for students as early as age 14 and act as a consultant for those students with a disability. If the counselor cannot attend in person, alternative methods are allowed, such as attending virtually or via a teleconference.

Early contact with students and their families increases planning and development opportunities, promoting informed decisions about employment goals. Pre-employment-transition services may be provided to students with a disability individually or in a group setting without regard to individual needs or disability-related concerns. Students may not need all five services; however, the opportunity for each must be available. Counselors should work with schools and providers to facilitate opportunities when services are unavailable.

#### **11.4 Procedures for the Vocational-Rehabilitation (VR) Counselor or Designee**

Responsibilities for the VR counselor or designee include:

- providing the required pre-employment-transition service activities to potentially eligible and eligible students with a disability. By August 30 of each school year, counselors should make contact and schedule a meeting with local educational agency personnel, including the school transition counselor, liaison, or designated staff;
- VR counselors are assigned to a high school (or high school charter schools) in the State. The VR counselor shall inform students, families, special-education and regular-education teachers, school administrators, advocacy groups, and others about the DVR and VR services available, including pre-employment-transition services.
- the VR counselor or designee will conduct presentations and distribute print and electronic materials that explain transition and pre-employment services, as well as vocational-rehabilitation services. The information provided will include a description of the purpose of the DVR, eligibility requirements, application procedures, and the scope of services that may be provided to eligible and potentially eligible individuals;
- the VR counselor shall reach out to eligible and potentially eligible students with a disability who are in need of transition services and pre-employment-transition services as early as possible through outreach activities, such as information sharing at IEPs, transition-planning meetings, career fairs, orientations, informational school meetings, parent support groups, and other activities.
- by October 31 of each school year, VR counselors or their designees should establish a designated day at assigned schools to provide pre-employment-



transition-service activities. These events include intake, pre-employment-transition services, and follow-up meetings with students who are already DVR clients.

- The VR counselor shall work with local school staff to identify all students with a disability, including those served in special education, who are receiving an accommodation under Section 504, and other students with a disability. This will include students with a disability receiving school psychological, health, nursing, or social work services and students with a disability enrolled in an educational program, not special education.
- by December 31 of each school year, intakes for seniors, as well as for deaf, hard-of-hearing, and high-risk students, should have occurred.
- The VR counselor or designee shall reach out to students with a disability who have dropped out of an education program or are at risk of dropping out of high school.
- The VR counselor or designee will collaborate with Local Educational Agencies (LEAs) to complete a needs assessment of LEAs in New Mexico. VR counselors and LEAs will identify, understand, and prioritize the needs of students with a disability in each LEA district. The VR counselor will identify roles and responsibilities, including nonfinancial costs to the LEA regarding needs assessment. LEAs will identify the number of potential students to be provided pre-employment-transition services, the number of students on each career pathway (Abilities, Modified, Standard), and the number of students on a 504 plan. The VR counselor will identify career programs and curricula, work experience, and where LEAs are seeing a gap in linkages and services in the transition process. A needs assessment should be completed by September 30 of each school year.
- The VR counselor or designee will collaborate with local educational agencies to complete the Collaboration Form. The VR counselor and LEAs will identify the roles and responsibilities regarding collaboration. The VR counselor, LEAs, and the transition specialist will coordinate attendance at Individual Educational Plans (IEPs), VR orientations, referrals to VR, and transition and career fairs, as well as provide pre-employment-transition services to students with a disability.
- Between January and May of each school year, counselors and designated DVR staff will provide pre-employment-transition services to potential and current VR students with a disability. They will conduct intakes, as referred, and work with school and workforce student programs to identify summer work-experience sites.
- A completed referral and pre-employment transition consent form must include the student's name, date of birth, Student Teacher Accounting Records System (STARS) number or identification number, race, ethnicity, disability, and the pre-employment-transition services needed. A signed Release of Information form shall be submitted to the DVR by public school staff, the student, or the guardian to share information.
- the pre-employment consent form will provide parental or guardian consent for the student to receive pre-employment-transition services.
- The VR counselor must verify that the individual is a student with a disability or ensure that the school personnel verified the student with a disability on the pre-employment transition consent form.

- VR staff will contact the student or family to schedule an initial intake or coordinate pre-employment transition services.
- The VR counselor shall be responsible for fulfilling the designated pre-employment-transition coordination activities.

Pre-employment-transition services may be provided to individuals or groups of students with a disability without regard to individual needs or disability-related concerns. Students shall not need all five services; however, the opportunity for each must be available. The VR counselor shall work with schools and providers to facilitate opportunities when the services needed are unavailable.

Per internal agency directives, the time spent delivering or coordinating pre-employment-transition services will be tracked.

Actual services must be entered immediately into the Case Management System (CMS) as pre-employment services are provided. Documentation shall occur each time pre-employment transition activities are conducted and must be maintained in the electronic case file.

The VR counselor must provide pre-employment-transition services to students with a disability, including required pre-employment-transition coordination activities with school personnel and families. The VR counselor and transition vocational-rehabilitation counselors are expected to have a significant presence at their assigned schools providing pre-employment transition services. Each will attend meetings for Individualized Education Plans (IEPs) for students, community school-to-work meetings, and Workforce Youth Program meetings.

The Workforce Innovation and Opportunity Act (WIOA) RSA-TAC-17-01 requires providing and reporting pre-employment-transition services provided to any reportable individual. A “reportable individual” is defined as “an individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program,” including:

- for purposes of the Title IV VR Program only, a student with a disability who solely receives pre-employment-transition services and who does not apply for VR services, who is not determined eligible, and who does not have an approved IPE.

To document the pre-employment-transition services provided to a reportable individual other than a VR participant, the Case-Management System includes a “PRE” case type.

When the office receives a pre-employment transition consent form for a student identified as potentially eligible, local office staff members must collect the necessary data elements in the “potentially eligible” (Pre-ETS case type section of the Case-Management System).

The DVR collects specific data elements for students with a disability who are potentially eligible for VR services, including name, Social Security number or identification number, date of birth, race, ethnicity, STARS number, documentation of a disability, and pre-employment-transition services needed and provided, including the dates of service.

## **11.5 Documentation**

To ensure accurate federal reporting, data elements must be recorded in the Case-Management System for each student receiving pre-employment-transition services. Pre-Case Service types in the case management system must be opened when the agency has received a signed pre-employment transition services consent form. Educational goals for pre-case service type must be established to identify the case as a student with a disability. A case number will be provided when a potentially eligible student is entered into the Case-Management System. The required data elements are:

- name,
- address,
- phone number
- date of birth,
- Social Security number (SSN) or identification number,
- gender,
- ethnicity,
- race,
- STARS student number,
- disability, and
- pre-employment-transition services needed.
- Educational Goal- must be established based on the current academic year and must be addressed annually based on academic year.
- Individualized Education Plan, 504 plan,
- documentation of disability (scan verification into the Case-Management System);

*(Note: MSG and credential attainment tracking is not required for potentially eligible cases)*

Closure of Potentially Eligible cases and Educational Goals: Regular contact with potentially eligible individuals must be conducted at a minimum annually, but attempts must be documented quarterly based on RSA 911 quarterly. Case note documentation must be entered into the case management system reflecting VR staff attempts to contact individuals in the Potentially Eligible caseload(s). In instances where the academic year has ended, the potentially eligible individual is not responsive and VR

staff are not able to collect the necessary data to begin/end the educational goal the following checklist must be followed prior to closing the Potentially Eligible case.

1. After 1 full academic year has passed and VR staff were unable to confirm school enrollment for a potentially eligible individual the Potentially Eligible case may be closed; if,
2. VR staff has made 3 attempts to contact the individual through at least 2 modes of communication. Attempt to contact must be documented into Case Management System.
3. Verification attempts with School personnel/contractors/parent or guardian have not validated the individual is still a student. (*VR agency cannot mandate receipt of IEP or 504 for potentially eligible*, Attempts to contact school personnel must be documented into Case Management System.

Other situations that may lead to case closure:

- a. Individual aged out of Student with Disability (14-21)
- b. Individual is no longer a student in the state of New Mexico
- c. Individual opens a VR Case

If an individual does reengage after a Potentially Eligible case closure a new Potentially Eligible case should be established or new General VR case whichever of the options is most appropriate.

Enrollment into the general VR program is encouraged as individuals may continue to receive Pre- Employment transition services while movement through the VR process. VR staff is responsible to provide at least one pre-ETS service prior to placing on delayed status. Individuals may continue to receive Pre-Employment Transition Services in application, eligible, delayed, and service, case status while they meet the definition of a Student with a Disability.

## **11.6 Order of Selection**

Students with a disability are not exempt from order-of-selection requirements. For students who are determined to be eligible but who are placed on order of selection:

- If the student received pre-employment-transition services before being placed in a closed priority category, he or she may continue to receive that and any of the five pre-employment-transition services, with or without funding costs, until the student reaches the age of 21.

- If the student did not receive pre-employment-transition services prior to being placed in a closed priority category, the student may not receive pre-employment-transition services while assigned to a waiting list in a closed category.
- The VR counselor is responsible for ensuring that any pre-employment-transition services provided are reported through Actual Services in the Case-Management System to ensure continuity for students with a disability on delayed status.

## **12 Services to Groups**

### **12.1 Policy Statement**

In addition to providing assistance to eligible individual participants through the Vocational Rehabilitation process, the New Mexico Division of Vocational Rehabilitation is able to provide vocational rehabilitation services to groups.

### **12.2 Requirements**

- a. In order to provide assistance under “services to Groups: the identified service must promise to contribute substantially to the vocational rehabilitation of a group of disabled individuals.
- b. When a service is identified which may potentially be addressed through Services to Groups, the Area Program Manager shall contact the Field Operation Director for Consultation.
- c. No commitments for services shall be made prior to approval of the Deputy Director of Rehabilitation Services.

### **12.3 Scope of Services**

The following are examples of possible services that can be provided under “services to Groups”:

- a. Development of telecommunication systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the needs of individuals with disabilities.
- b. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act and that are seeking to employ individuals with disabilities.
- c. Purchase or lease of a vehicle (e.g. van) to provide transportation to a group of disabled individuals
- d. Purchase of equipment for instructional materials that would benefit a group of disabled individuals. Consultative and Technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

## 13. Credential Attainment

**13.1 Policy Statement:** The purpose of this policy is to provide guidance related to documentation and reporting on credential attainment as a performance indicator of the Workforce Innovation and Opportunity Act (WIOA).

Authority: Section 116 of WIOA establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of states in achieving positive outcomes for individuals served by Vocational Rehabilitation Programs. To meet this standard VR agencies must report and collect data on MSGs and credential attainment based on the definitions and documentation requirements.

### 13.2 RSU Documentation Requirements

- DVR staff must follow documentation procedures outlined in this policy, in accordance with the Manual of Operating procedures. All credentials and MSG are documented through the IPE, Education page in Aware and with supporting documentation.
- Refer to section 14.5 of this manual for additional documenting requirements for Credential Attainment.

### 13.3 Credential Attainment (CA)

CA indicator is the percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program.

A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or its recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program.

*Note: This 'special rule' for secondary school diplomas is handled by DVR assigned staff and does not require any follow-up with participants after they exit the program, unless otherwise directed by RSU.*

The CA rate is an exit-based measure; therefore, participants will be included in the calculations for performance after they exit the program. DVR staff are required to report all credentials earned during participation in the program. For example, if a participant earns a high school diploma and an occupational license, the VR Counselor is required to document both. Once the participant exits, the highest credential reported will be included in the agencies calculations of performance toward the CA rate.

### 13.4 Types of Credentials

This indicator measures attainment of the following two types of credentials: A recognized **postsecondary** credential, or a **secondary** school diploma or its recognized **equivalent**.

### Postsecondary Organizations Awarding Recognized Credentials

A recognized postsecondary credential is awarded in recognition of a participant's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation. These technical or industry/occupational skills are generally based on standards developed or endorsed by employers or industry associations. DVR accepts credential verification by a variety of organizations and institutions that award recognized postsecondary credentials, including the following:

1. State Educational Agency, including Career and Technical Education Institutions;
2. Higher Education Institutions and programs eligible to participate in the Federal student financial aid programs (e.g., community colleges and universities both public and private and programs that are FAFSA eligible);
3. Higher education institutions that are formally sanctioned or chartered by the governing bodies of Native American Tribes;
4. A professional industry, employer organization or product manufacturer/developer using a valid reliable assessment of an individual's knowledge, skill, and abilities;
5. Apprenticeship (State and Federal);
6. A public regulatory agency which awards a credential or license that is necessary to obtain employment in a particular profession or occupation (e.g., licenses awarded by the New Mexico Regulation and Licensing Department);
7. Programs approved by the Department of Veterans Affairs to offer education benefits; and
8. Job Corps, which issues certificates for completing career training programs that are based on industry skills standards and certification requirements.

Not all credentials by these entities meet the definition of recognized postsecondary credential. It is crucial that DVR staff understand the types of credentials that meet the definition under WIOA to ensure accurate reporting for the CA rate. If questions arise regarding various training programs, VR Counselors should consult with supervision to ensure accuracy.

### Secondary Organizations Awarding Recognized Credentials

A secondary school diploma, alternate diploma or recognized equivalent (commonly referred to as high school diploma) is one that is recognized by the State of New Mexico Public Education Department. Secondary school equivalency certification signifies that a student has completed the requirements for a high school education. Refer to NMAC 6.29.1 <https://www.srca.nm.gov/parts/title06/06.029.0001.html>.

### 13.5 Credential Allowable Documentation Examples

Types of Credentials	Examples
Secondary school diploma or recognized equivalent	<ul style="list-style-type: none"><li>• High School Diploma</li><li>• GED</li></ul>
Associate degree	<ul style="list-style-type: none"><li>• AS Marketing</li><li>• AS Accounting</li></ul>



Bachelor's degree	<ul style="list-style-type: none"> <li>• BS Social Work</li> <li>• BS Graphic Design</li> </ul>
Graduate degree	<ul style="list-style-type: none"> <li>• MS Rehabilitation Counseling</li> <li>• MBA – Business Admin.</li> </ul>
Occupational licensure	<ul style="list-style-type: none"> <li>• Registered Nurse License</li> <li>• Barbering License</li> </ul>
Occupational certificate, including Registered Apprenticeship and Career and Technical Education certificates	<ul style="list-style-type: none"> <li>• Welding Certificate</li> <li>• Plumbing Registered Apprenticeship Certificate</li> </ul>
Occupational certification	<ul style="list-style-type: none"> <li>• Automotive Service Excellence certification</li> <li>• Job Corps – Career Technical Training certification</li> <li>• Pharmacy Technician Certification</li> <li>• Certified Nursing Assistant (CNA)</li> </ul>

### **13.5.1 What is NOT a Credential**

Certificates must recognize technical or industry/occupational skills for the specific industry or occupation rather than general skills related to safety, hygiene, etc., even if such general skills certificates are broadly required to qualify for entry-level employment or advancement in employment. Although these types of certificates may not count towards the credential attainment indicator, these types of certifications may lead to positive outcomes in the ability to obtain, maintain, and advance in employment, so it may be valuable to provide services that lead to such certificates under an IPE. In such circumstances, these certificates are not documented in the Educational Goal page as credentials.

<b>Examples that Do NOT Meet the WIOA Definition of Credential</b>
Special Education Certificate of Completion
Work/Career Readiness Certifications (workforce development boards)
Completion of Orientation and Mobility Training
OSHA 10, CPR, First Aid – Other common job-related safety and health hazard training certifications
DVR sponsored On-the-Job Training (OJT) – See MSG
Transportation skills attainment
Soft skills training
General computer and security certificates

## 14. Measurable Skill Gains (MSG)

**14.1 Policy Statement** The MSG indicator is the percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.

The MSG rate is not an exit-based indicator. It includes all participants in education or training programs that lead to a recognized postsecondary credential, a secondary school diploma or recognized equivalent, on their IPE. It also includes participants who are enrolled in a training program that leads to employment (e.g., On-the-Job Training). The purpose is intended to capture interim progress of all participants enrolled in education or training services towards a recognized credential or employment while being supported through the Vocational Rehabilitation program.

### 14.2 RSU Documentation Requirements

DVR staff are required to report all MSGs earned during participation in the program for each participant. For example, if a participant achieves an MSG for both fall and spring semesters in postsecondary education, the VR Counselor is required to document both. The most recent MSG reported will be included in the agencies calculations of performance toward the MSG rate.

DVR staff must follow documentation procedures outlined in this policy, in accordance with the Manual of Operating procedures. All credentials and MSG are documented through the IPE, Education page in Aware and with supporting documentation.

### 14.3 Types of Measurable Skill Gains (MSG)

MSGs are intended to capture important progressions through pathways that offer different services based on program purposes and participant needs. Depending upon the type of education or training program in which a participant is enrolled, documented progress is defined as one of the following:

1. Documented achievement of at least one **educational functioning level** of a participant who is receiving instruction below the postsecondary education level ([https://hed.nm.gov/students-parents/adult\\_education](https://hed.nm.gov/students-parents/adult_education)).
  - a. Documenting an Educational Functioning Level (EFL) gain through a pre- and post-test showing the participant's measured progress (such as an increased Reading/Math/English level measured through a TABE, ABLE, or BEST).
  - b. Documenting an EFL gain while enrolled in adult high school programs that leads to a secondary school diploma or its recognized equivalent may measure and report an educational gain through the awarding of credits or Carnegie units; or
  - c. Documenting an EFL gain for participants who exit a program below the postsecondary level and enroll in postsecondary education or training during the program year. This applies to participants enrolled in a basic education program. *(Note: Concurrent enrollment in postsecondary training and adult*

*education does not meet the definition of increase in educational functioning level.)*

2. Documented attainment of a **secondary school diploma or its recognized equivalent**.
  - a. Documented achievement of a high school diploma and recognized equivalents (e.g., GED, High School Equivalency Test (HiSET) awarded by New Mexico's secondary schools and Adult Education Programs. *(Note: Special Education certificates are not considered a Credential, therefore MSGs are not applicable and should not be documented as such.)*
3. **Secondary or postsecondary transcript or report card** for a sufficient number of credit hours that shows a participant is meeting the State of New Mexico's academic standards.
  - a. **Secondary Education**
    - i. Successful completion of a semester in a secondary school program: This includes students who are seeking a high school diploma or recognized equivalent on their IPE. VR Counselors should review the participant's report card to ensure that the student has successfully passed all courses. "Passing" refers to the minimum grade required to receive credit hours for completion of a course. If the report card indicates the participant dropped out of school, was removed from the institution, or any other conditions that indicate removal on academic or conduct grounds, then the individual did not achieve a MSG.
  - b. **Postsecondary Education**
    - i. Full-time students must complete at least 12 hours/credits for one semester at a 2.0 GPA or higher.
    - ii. Part-time students must complete at least 12 hours/credits over the course of two completed semesters at a 2.0 GPA or higher (e.g., 6 credits earned during the Fall semester and 6 credits earned during the following Spring semester) during a 12-month period. For part-time students, the MSG occurs and is documented in AWARE in the program year that the 12th credit hour is obtained.
    - iii. Other recognized education programs in which the participant is enrolled include, but not limited to, semesters, trimesters, quarters, and clock hours for the calculation of credit hours when they achieve the equivalent of this MSG. (e.g. Graduate school Full-time status is 9 credit hours per semester)
4. **Training Milestones:** Satisfactory or better progress report towards established milestones, such as completion of OJT or completion of one year of an apprenticeship program or similar milestones from an employer or training provider who is providing training.

- a. Documented successful completion of a DVR or partner-sponsored OJT program by the employer/trainer validating the skills attained by the participant.
  - b. Documented milestones achieved through participation in Project Search program. IPE vocational goal should be in alignment with the vocational skills learned at the Project Search site to capture MSG.
  - c. Documented milestones through Registered Apprenticeship Training (or similar type of training) progress reports by the employer or training provider. Progress reports may include milestones completed as the participant masters the required job skills or steps to complete the program and increases in pay or performance as a result from newly acquired skills. *(Note: Pre-Employment Transition Services Work-Based Learning Experiences are general in nature; therefore, they are not included as an MSG.)*
5. **Skills Progression:** Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.
- a. Documentation includes the results indicating a passing score on a certification or licensure exam, occupational skills exams, and knowledge-based exams.

#### 14.4 MSG Allowable Documentation Examples

MSG Type	Example of Documentation
1. Educational Functioning Level (EFL)	<ul style="list-style-type: none"> <li>Increased reading level from 8<sup>th</sup> grade to 9<sup>th</sup> grade documented by TABE pre- and post-tests</li> <li>Report card showing passing grades in an adult education course</li> <li>Passing scores on GED exam</li> </ul>
2. Secondary school diploma or its recognized equivalent	<ul style="list-style-type: none"> <li>High school diploma</li> <li>High School Equivalency Test (HiSET)</li> <li>GED</li> </ul>
3. Secondary/Postsecondary Transcript or Report Card	<ul style="list-style-type: none"> <li>Secondary report card (passing semester grades)</li> <li>Postsecondary transcript (12 credits earned)</li> </ul>
4. Training milestone achieved by Satisfactory performance	<ul style="list-style-type: none"> <li>OJT successful completion</li> <li>Registered Apprenticeship progress report</li> <li>OJT milestones</li> </ul>
5. Skills progression	<ul style="list-style-type: none"> <li>NCLEX exam results</li> <li>HVAC exam results</li> </ul>

##### 14.4.1 What is NOT an MSG

- MSGs document academic, technical, occupational, or other forms of progress towards recognized credentials and employment. Therefore, DVR staff must not

document MSG for achievements that are general in nature, disability adjustment training, or do not lead to specific skills required for a particular occupation.

Examples that Do NOT Meet the Definition of a WIOA MSG
Yearly progression in Special Education while working toward a Certificate of Completion
Transportation Skill Attainment (e.g., mastering use of public transportation)
Mastery of Orientation and Mobility skills
General skills gained as part of the Individualized Plan for Employment (IPE) for activities that do not relate to training and education
Vocational Evaluation assessments and aptitude tests
Documentation of attainment of Microsoft Office skills in JAWS
Soft skills training

#### 14.5 Credential Attainment and MSG Documentation Requirements

- Both MSGs and credentials are to be documented at the time they are achieved by the participant. Prior to recording these on the Educational Goal in AWARE, VR Counselors must:
- Include on IPE the education secondary/post-secondary goal status. Add training services as appropriate to the case and document how the service is being provided (i.e., DVR, purchase/vendor, comparable benefit); the IPE should include a planned service for the training program whether or not the VR program provides the funding if it is in support of the identified vocational goal. (*Note: It is important to accurately capture the training status in the IPE dropdown option due to it directly impacting data that is captured and reported through the Educational Goal*).

**Employment Goal**

Goal  Find Erase

Custom  ?

Secondary Education  ?

Post Secondary Education  ?

**Secondary Education**

**Post Secondary Education**

**Reason for Selecting**

*(A red arrow points to the dropdown menu for Secondary Education)*

Post Secondary Education (Not Completed) ▼

Reason for Selecting (Not Completed)

☒ A good choice given m

Achieving post-secondary diploma is a goal

Achieving post-secondary diploma is not a goal

- Obtain supporting documentation for **enrollment** in a training or education program that leads to a credential or employment (MSG only). Enrollment can be documented in a variety of ways depending on the type of program. Supporting documentation must be included to verify enrollment (e.g., case note, acceptance letter, registration/transcripts, IEP, Pre-Ets Consent form, OJT agreement).
- All supporting documentation must be maintained in the client record. Both MSG and credentials are filed in Aware by: New, Attachment, Select the appropriate category, upload attachment. The naming convention of files should be reflective of the type of document and year. (i.e., FallSemester.2023)

Once a participant is in an IPE and enrolled in an education or training program, the VR Counselor must complete the following:

- On the Educational Goal, select the appropriate education type and document the begin date the participant enrolled in the education or training program that leads to a secondary school diploma, recognized equivalent, postsecondary education, or employment (*Note: If a participant was already enrolled at the time of IPE, the enrollment date should be the date of the initial IPE*).

Educational Goal Desc	
Adult Secondary Education - Alternative (Private / Non-State)	
Adult Secondary Education (State)	
Career/Technical Training Program (Credential)	
Career/Technical Training Program (No Credential)	
Graduate School	
On-the-Job Training	
Post-Secondary	
Project Search	
Registered Apprenticeship Program	
Secondary Education	
Special Education	

- Verified through supporting documentation as outlined in this policy, document the date and type of MSG achieved by the participant within each educational goal. The date of the MSG should correspond to the date it was achieved or the last date of attendance (if MSG achievement date is not available), not the date in which the VR Counselor received the documentation. For example, a

participant who achieves an MSG at the completion of the fall semester in postsecondary education may not provide the VR Counselor with the documentation until the following month. The VR Counselor should accurately document when the achievement was made (e.g., December 16, XXXX) rather than when it was reported to DVR (e.g., January 10, XXXX). Should documentation be obtained after June 30<sup>th</sup> of the current program year, it will be necessary that staff submit an AWARE request to capture the MSG no later than July 30<sup>th</sup> of the new program year.

- Verified through supporting documentation as outlined in this policy, document the date and type of credential attained by the participant within each educational goal. The date of the credential should correspond to the date it was achieved, not the date in which the VR Counselor received the documentation. For example, a participant who attains a credential at the completion of the spring semester in postsecondary education may not provide the VR Counselor with the documentation until the following month. The VR Counselor should accurately document when the credential was attained (e.g., December 16, XXXX) rather than when it was reported to DVR (e.g., January 10, XXXX). Should documentation be obtained after June 30<sup>th</sup> of the current program year, it will be necessary that staff submit an AWARE request to capture the CA no later than July 30<sup>th</sup> of the new program year.
- The Educational Goal outcome must be completed once the participant is no longer enrolled in an education or training program. Document the date the participant completed (e.g., high school diploma, bachelor's degree, OJT) or disenrolled (e.g., case notes or records from program) from their education or training program on the Education Data Page in AWARE by selecting the appropriate Outcome in the Educational Goal. *(Note: This is a crucial step to ensure an accurate count of participants in DVR's denominator during each program year's performance calculations.)*
- Repeat steps as needed. For example:
  - Multiple MSGs can be documented under the same educational goal depending on the length of the training program
  - Participants may enroll in multiple education or training programs while participating in the VR program. For example, a student in secondary education may earn their high school diploma and then continue into postsecondary education and earn a degree and/or license; a student may enroll in postsecondary education and drop out due to the program not being a good fit, later to reenroll in something more appropriate leading to success.

#### **14.5.1 Aware Educational Goal CA and MSG Mapping**

- The following table provides an outline of the educational goals in Aware, and the applicable MSG and/or credentials. For training programs that lead to employment with no credential (MSG only), the process is the same, except that the educational outcome documents the completion of the MSG instead of a credential.



<b>Aware Educational Goal</b>	<b>Applicable MSG(s)</b>	<b>Applicable Outcomes</b>
<b>Adult Secondary Education(state)</b>	Educational Functioning Level (EFL), Secondary/Postsecondary Transcript or Report Card, Skills Progression	Secondary School Equivalency, Disenrollment
<b>Adult Secondary Education (private, non-state, alternative)</b>	Educational Functioning Level (EFL), Secondary/Postsecondary Transcript or Report Card, Skills Progression	Secondary School Equivalency, Disenrollment
<b>Career/Technical Training Program (Credential)</b>	Secondary/Postsecondary Transcript or Report Card, Training Milestone, Skills Progression	License, Certificate/Certification , Disenrollment
<b>Career/Technical Training Program (Non-Credential)</b>	No MSG (Pre-ETS ONLY)	Completion No-Credential, Disenrollment
<b>Graduate School</b>	Postsecondary Transcript or Report Card.	Graduate Degree Disenrollment
<b>On-the-Job Training (OJT)</b>	Training Milestone	Completion No-Credential, Disenrollment
<b>Postsecondary Education</b>	Secondary/Postsecondary Transcript or Report Card, Skills Progression	Associate Degree, Bachelor's Degree, Disenrollment,
<b>Project Search</b>	Training Milestone	Completion No-Credential, Disenrollment
<b>Registered Apprenticeship Program</b>	Training Milestone, Skills Progression	License, Certificate/Certification , Disenrollment
<b>Secondary Education</b>	Secondary/Postsecondary Transcript or Report Card	Secondary School Diploma, Disenrollment
<b>Special Education</b>	No MSG (Pre-ETS ONLY)	

Note: The Education page is also used to verify a Student with a Disability (SWD) for purposes of receiving Pre-Employment Transition Services (Pre-ETS). For more information, refer to section 11.5.

## 14.6 Internal Controls



DVR incorporates a variety of internal controls to ensure the accuracy of collecting, documenting, and reporting MSG and credential attainment.

- DVR RSU Managers conduct monthly case reviews, which include targeted reviews on MSG and credential attainment.
- Regular use of RSA-911 error checks, RSA dashboards, and AWARE reports.
- Annual Training related to policy/regulatory (including updates and changes), best practices, and outcomes.

## **15. Participant Financial Contribution**

### **15.1 Philosophy**

The DVR provides vocational-rehabilitation services to eligible participants in the most expeditious manner possible. The use of comparable benefits and a process to determine the participant's financial contribution are intended to provide a vehicle for maximizing the responsibility of all concerned parties in meeting the cost of vocational-rehabilitation services, not to screen out or deny services to participants. The DVR will not require a financial contribution from SSI or SSDI beneficiaries who receive benefits based on their disabilities.

### **15.2 Process for Determining Participant Financial Contribution**

#### ***15.2.1 How the Participant's Financial Contribution is Determined***

Federal Poverty Guidelines are published each year in January by the United States Department of Health and Human Services. These Guidelines shall be posted annually and emailed to the DVR's offices to coincide with the publication month of these Guidelines.

#### ***15.2.2 Implementation Guidelines***

The Participant Financial Statement (Financial Statement) shall be completed in all cases before the first Individualized Plan for Employment. It will be valid for 12 months. The Financial Statements will be updated as the participant's financial circumstances change, but at a minimum, on an annual basis, usually at the annual review. The counselor shall complete the Financial Statement with the participant, or if the participant is not self-supporting, the spouse, parent, or guardian responsible for the participant.

a. Family income will be used to complete the Statement if the spouse, parent, or guardian responsible for the participant claims the individual as a dependent for federal income tax purposes.

b. The participant or, if appropriate, the spouse, parent, or guardian shall receive a copy of the completed DVR form.

#### ***15.2.2.1 Exceptions***

Expenses not included in the Participant Financial Contribution include current expenses directly related to the participant's disability or the disability of another family member dependent on the Financial Statement income. These include expenses not covered by other sources and are not reimbursable. These shall be deducted from the

Statement's adjusted gross annual income. These expenses include, but are not limited to:

- medical/hospital bills;
- medical supplies/equipment;
- prescribed medications;
- therapy;
- adaptive equipment (including equipment maintenance and supplies);
- attendant care;
- extraordinary transportation costs;
- driver, reader, or interpreter services; and
- disability-related home modifications.

If documented and approved by the VR counselor, these expenses will be deducted from the adjusted gross annual income equivalent to anticipated costs during the 12 months, including monthly yearly installment payments, such as for loans for disability-related home modifications.

### **15.3 Participant Responsibility to Cooperate**

The participant, spouse, parent, or guardian is expected to provide the counselor with documentation of income and exceptional expenses when the Financial Statement is completed. When there is a refusal to provide this documentation or contribute, the counselor shall attempt to ascertain the reasons for the refusal and provide guidance on the benefits of cooperation. When the participant is self-supporting or in control of their income and reasons for refusal are not forthcoming, or guidance is denied, the DVR may not provide coverage of the cost of services.

#### **15.3.1 Comparable Benefits**

Comparable benefits, if available, must be used in developing the IPE planned services. Comparable benefits that provide monetary support for planned services must be correctly calculated by the VR counselor within costs for planned services developed in an IPE. If no comparable benefit is available, the VR counselor must describe and document what resources were explored. Comparable benefits not utilized must also be documented as to why they are not appropriate for reasons explicitly related to lack of available funding or undue hardship for the participant, such as excessive travel or exacerbation of the disability. The use of comparable benefits is not based on the participant's preference. Only reasons justified through lack of resources or disability-related concerns are permissible reasons for not using available comparable benefits. Rehabilitation technology, including assistive technology, services, and vehicle modification, does not require exploring comparable services or similar benefits.

#### **15.3.2 SSI Recipients and SSDI Beneficiaries**

The DVR will not require a financial contribution from recipients of SSI or SSDI who are receiving benefits based on their disabilities. However, other sections of this manual pertaining to service provisions and limitations remain applicable. SSI recipients are required to comply with federal regulations related to the use of their benefits. The counselor must consider these requirements of receipt of SSI benefits in planning for and funding services.

#### **15.4 Identification of Services that Require a Participant Financial Contribution or Comparable Benefits**

The table on the following page delineates which services provided in a TWE and IPE plan do or do not require applying a financial statement or exploring comparable benefits (see Table 8).

**Table 8**

*Services that Do and Do Not Require a Participant's Financial Contribution or an Exploration of Comparable Services and Benefits*

SERVICE	Requires Participant Financial Contribution	Requires Exploration of Comparable Services or Similar Benefits
Adjustment/mobility training	No	No
Assessment for determining eligibility (and priority of service)*	No	No
Assessment for determining rehabilitation needs	No	No
Books, Supplies, Occupational Tools, Equipment, Licenses, and Personal Computers	Yes	Yes
Computer-related equipment and software	Yes	Yes
Cost of services to other family members	Yes	Yes
Dental services	Yes	Yes
Discretionary training fees are not included in the tuition	Yes	Yes
Counseling and Guidance	No	No
Home-accessibility modifications (considered assistive technology)	Yes	No
Incidental expenses	Yes	Yes
Job placement	No	No
Maintenance	Yes	Yes
Other capital-outlay purchases	Yes	Yes
Personal assistance services (e.g., attendant, scribe, reader, interpreter)	No	Yes
Physical or mental restoration, including medications	Yes	Yes
Referral to other agencies & programs	No	No
Rehabilitation technology, including assistive technology devices and services	Yes	No
Small-business enterprise costs	Yes	Yes
Transportation	Yes	Yes
Tuition and course-related fees for college or vocational training	Yes	Yes

SERVICE	Requires Participant Financial Contribution	Requires Exploration of Comparable Services or Similar Benefits
Vehicle modifications (considered assistive technology)	Yes	No
Work tools, supplies, & uniforms	Yes	Yes

*\*Note.* An exception would be for those services other than assessment services provided to a participant with a significant disability while exploring the participant's abilities, capabilities, and capacity to perform in work situations through Trial Work Experiences (TWEs).

The same guidelines apply for trial work services, including any above-listed services. Exemptions: No financial contribution is required as a condition for furnishing any vocational-rehabilitation service if the participant in need of the service has been determined to be eligible for Social Security benefits under Title II or Title XVI of the Social Security Act.

## 15.5 Procedures

- A. In situations where the participant refuses to provide verification, only those services that do not require a Participant's Financial Contribution can be provided.
- B. A determination as to whether the Participant's Financial Contribution is applied is made when the participant and counselor develop an Individualized Plan for Employment (IPE), a Trial Work Experience (TWE), service status, and plan amendments.
- C. If the service(s) provided under the IPE requires a Participant's Financial Contribution, it is applied to that respective service in the IPE. If the service(s) provided in the IPE does not require a Participant's Financial Contribution, applying the test to those exempt services in the IPE is unnecessary.
- D. The Financial Statement must be completed annually and revised when the participant reports a financial situation or family size change that might affect the contribution to the cost of services.
- E. The Financial Statement is completed to determine whether the participant meets the financial needs requirement. If the participant meets the Participant Financial Contribution, they are not required to contribute to the service(s) cost. If the participant does not meet the Participant Financial Contribution, they are expected to contribute to the cost of the services.
- F. Once the Participant Financial Statement is completed, the Case-Management System "Application" data page should be updated to reflect the verified information that was provided at the time of application, including the number of family, the number of dependents, the amount of family income, the primary source of support, whether the participant is exempt from the Participant Financial

Contribution, and whether medical insurance is available from or supplied by the employer.

- G. The criteria used to determine whether the participant meets the Participant's Financial Contribution are based on the Federal Poverty Rate published by the United States Department of Health and Human Services. If the participant's or family's income is at or below 130% of the identified poverty rate, the participant is exempt from the Participant's Financial Contribution. If the income exceeds that, the participant will be required to participate in the cost of the good(s) or service(s).
- H. Students with Disabilities who file taxes independently will not be required to include household income in the PFC.

### **15.5.1 Countable Income**

The income and resources of the family are to be used when the individual is part of a family. "Family" is defined as the family members (including any dependents) reported on the most recent federal income tax return. If the participant has been claimed as a dependent on any household member's income tax return, all family income reported on that return must be considered. If the participant filed an individualized income tax return and was not claimed on any other household member's income tax return, they are counted as individuals.

When the most current income tax return does not reflect current income, the following sources of income must be considered:

- wages: net wages of the participant and family members (if considered a member of a household);
- family contribution: contributions from family or individuals in cash or on a regular basis;
- public assistance, including TANF and general assistance;
- SSDI and SSI received by the family and household members;
- workers' compensation;
- income from room, board, and rental property;
- assistance from private welfare agencies, service clubs, or church groups;
- income from stocks, dividends, bonds, interest, or other financial investments;
- insurance benefits, retirement benefits, and pensions;
- unemployment compensation benefits;
- Social Security benefits other than SSDI;
- liquid assets in the form of cash and savings accounts; and
- any other form of income not listed above.

#### **15.5.1.1 Requirements for Verifying Income.**

All applicants are required to provide verification of income. Examples of income verification include:

- current income tax returns;



- check stubs;
- FAFSA;
- award letters for public assistance (e.g., TANF, veterans' benefits, SSI or SSDI (or copies of checks);
- bank statements;
- receipts from renters or recipients of in-kind services; and
- financial investment reports.

In situations where the participant refuses to provide verification, only those services that do not require a Participant's Financial Contribution can be provided. Unusual or exceptional circumstances: In situations where the case record documents an unusual or exceptional family circumstance, the area manager must approve any exceptions to proof-of-income requirements. Exceptions to proof of income will require documentation from sources other than the DVR case record narrative. At a minimum, such documentation must include at least two letters from unbiased third parties who personally have knowledge of the participant's situation and can verify the circumstances. At least one letter must be on letterhead and must come from a guidance counselor, a physician, a social worker, a clergy, or another individual who is familiar with the circumstances in a professional capacity.

#### **15.5.1.2 Summary of Procedures for Calculating Participant Financial Contribution.**

When the participant does not meet the Participant Financial Contribution, they will be required to contribute to the cost of services if required (see Table 8). Participant contribution calculations will be documented in the DVR-approved Participant Financial Statement. The Statement must be completed annually, usually at the annual review.

## **16. Participant's Rights**

### **16.1 Policy Statement**

The New Mexico Division of Vocational Rehabilitation (DVR) has established procedures to ensure that an applicant or a participant who is dissatisfied with any determination made by the DVR's staff that affects the provision of vocational-rehabilitation services may request (or, if appropriate, may request through the individual's representative) a timely review of that determination. The DVR may not institute a suspension, reduction, or termination of vocational-rehabilitation services being provided to an applicant or an eligible individual, including evaluation and assessment services and the development of an Individualized Plan for Employment (IPE), pending a resolution through mediation, pending a decision by a hearing officer, or pending informal supervisory review unless:

- the individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or
- the DVR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the individual or the individual's representative.

When notifying an applicant or a participant of their right to appeal and when communicating with an individual during the dispute-resolution process, the DVR will ensure that appropriate modes of communication are being used to facilitate effective communication with the participant or the participant's representative.

The DVR may not institute a suspension, reduction, or termination of any planned service in an approved Individualized Plan for Employment (IPE) provided to the participant, pending a resolution through any of the appeal processes. Appropriate evaluation and assessment services and IPE development should not be delayed pending resolution through any of the appeal processes. While notifying participants of their appeal rights and conducting any procedure related to appeals, the DVR will ensure that appropriate modes of communication are being used to facilitate effective communication with the participant or the participant's representative.

### **16.2 Notification Process**

Notification of the options for dispute resolution, as well as how to access these options and information regarding the availability of the Client Assistance Program (CAP) to assist during these processes, must be provided to participants in writing and through methods that participants can adequately understand. The CAP is authorized under Section 112 of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act and Title 1 of the Americans with Disabilities Act of 1990 (ADA). The CAP is a separate nonprofit agency that receives federal grants to provide information about and referral to services available to persons with a disability under the

Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990. The CAP also provides individual case advocacy to facilitate access to the services funded under the Rehabilitation Act of 1973 and systems advocacy to promote, protect, and expand the rights of persons with a disability.

The Client Assistance Program (CAP) is authorized by 29 U.S.C 732 p.l. 105-220 and the Rehabilitation Act of 1973, as amended, the Workforce Innovation and Opportunity Act, and Title I of the Americans with Disabilities Act of 1990 (ADA), which covers students with a disability under Section 113 and individuals with disability employment at subminimum wage under Section 511 of the Rehabilitation Act. The CAP is an advocacy program for people with a disability who are seeking or receiving rehabilitation services authorized in the Rehabilitation Act and provided by or funded through the State of New Mexico Division of Vocational Rehabilitation (DVR), the Commission for the Blind, and/or State Independent Living Centers. The following services and assistance are offered by the Client Assistance Program (CAP):

- informing and advising applicants and recipients of all available services under the Rehabilitation Act and under Title I (Employment) of the Americans with Disabilities Act (ADA).
- helping applicants and recipients obtain services funded under the Rehabilitation Act, provided by the New Mexico Division of Vocational Rehabilitation (DVR), the New Mexico Commission for the Blind, Centers for Independent Living, or any of their private providers.
- investigating the questions or complaints of applicants and recipients about services provided under the Rehabilitation Act.

Options for dispute resolution include:

- *Informal Supervisory Review*: a process by which a DVR program manager reviews a determination or action made by the DVR's staff that affects the provision of vocational-rehabilitation services. This process may resolve issues as close to the field-service delivery level as possible before mediation or a fair hearing.
- *Mediation*: a process by which the parties meet with an independent and impartial qualified mediator to assist them in settling differences or disputes prior to pursuing a fair hearing or other legal remedies.
- *Fair Hearing*: a process by which an impartial hearing officer conducts a hearing to review the disputed decision, hears testimony and evidence from the parties, and issues a written decision setting forth the findings and the grounds for the decision.

Participants and applicants of vocational-rehabilitation services must be provided with written notice of their rights and responsibilities, the availability of dispute-resolution options, and the addresses of the DVR director and the Rehabilitation Services Unit (RSU) deputy director at the following times during the rehabilitation process:

- at application for VR services;

- at the time the individual is assigned to a category in the State's order of selection (if the DVR has established an order of selection);
- while developing an IPE;
- at any time when a service is denied, reduced, suspended, or terminated and the action is in dispute;
- upon determination of ineligibility for VR services; and
- at case closure.

For more information regarding dispute-resolution options and the rights and responsibilities of the parties during these processes, please review the New Mexico Administrative Code Rule 6.101.2, which can be found on the State Records and Archive's website at: <https://www.srca.nm.gov/parts/title06/06.101.0002.html>.

### **16.3 Informal Supervisory Review**

A participant or an applicant for vocational rehabilitation services may elect to have a disputed decision reviewed by a program manager prior to pursuing mediation or a fair hearing. An informal supervisory review is a process by which a DVR program manager reviews a determination or action made by the DVR's staff that affects the provision of vocational-rehabilitation services. This process may resolve issues as close to the field-service delivery level as possible before mediation or a fair hearing. Informal supervisory review is voluntary and shall not be used to deny or delay the right to pursue mediation or a fair hearing.

#### **16.3.1 Procedures**

- A participant or an applicant for vocational-rehabilitation services may request an informal supervisory review by sending a written request to the RSU deputy director within 45 calendar days of a disputed decision.
- The local program manager will conduct an interview with the individual regarding the request, review the case file, and clarify with the assigned counselor the rationale for the decision.
- If the local program manager was involved in the disputed decision, the RSU deputy director can assign a different program manager or Field Operations Director (FOD) to conduct the informal supervisory review.
- Within five (5) working days, the program manager or another individual assigned by the RSU deputy director to conduct the informal supervisory review will respond to the participant in writing and place a copy of the written decision in the case file, as well as to notify the counselor of the decision. Written notice to the participant shall include information regarding further appeal processes.
- The counselor shall ensure that any decisions made by the program manager are implemented unless otherwise assigned by the program manager, the FOD, or the RSU deputy director.

## **16.4 Mediation**

A participant in or an applicant for vocational-rehabilitation services may pursue mediation to settle a disagreement between the DVR's staff and the participant or applicant. Mediation is a process by which the parties meet with an independent and impartial qualified mediator to assist them in settling differences or disputes prior to pursuing a fair hearing or other legal remedies. Participation in mediation is voluntary and shall not be used to deny or delay an individual's right to a fair hearing.

For more information on the mediation process and the rights and responsibilities of the parties during mediation, please review the New Mexico Administrative Code Rule 6.101.2, which can be found on the State Records and Archive's website at: <https://www.srca.nm.gov/parts/title06/06.101.0002.html>.

### **16.4.1 Requirements**

Mediation will be conducted by a qualified and impartial mediator trained in effective mediation techniques.

- A. The participant and the DVR staff involved have the right to representation by a representative or an advocate during the mediation process.
- B. The parties shall be able to submit evidence or other information supporting their positions.
- C. Discussions during mediation must be kept confidential and may not be used as evidence in subsequent fair hearings or civil proceedings. The parties may be required to sign a confidentiality pledge prior to the commencement of the mediation process.
- D. The cost of mediation is covered entirely by the DVR. An applicant or a participant is not expected to bear any cost associated with mediation services aside from any fee for representation that the individual chooses to acquire.

### **16.4.2 Procedures**

- A. A participant or an applicant for vocational-rehabilitation services may request mediation services by submitting a written request to the DVR director within 45 calendar days of the disputed decision.
- B. If all the parties agree to pursue mediation, the DVR director will refer the case to mediation. A mediator will be selected randomly or by agreement between the applicant or participant and the DVR director. The selection of a mediator shall be made from a pool of qualified mediators established jointly by the State Rehabilitation Council and the DVR director. The mediator shall not be an employee of the DVR.
- C. The assigned mediator will coordinate with the parties to arrange the mediation session's date, time, and location.
- D. An agreement reached by the parties must be described in a written mediation agreement developed by the parties with the assistance of the mediator and signed by both parties. Copies of this agreement will be mailed to both parties.
- E. At any point during the mediation process, either party may elect to terminate the mediation. Either party may pursue a resolution through a fair hearing if this occurs.
- F. The counselor will ensure that any agreements outlined in the mediation agreement are implemented unless assigned by the area manager, the FOD, or the RSU deputy director.

### **16.5 Fair Hearings**

A participant in or an applicant for vocational-rehabilitation services may pursue a fair hearing with or without pursuing other dispute-resolution options. A fair hearing is when an impartial hearing officer conducts a hearing to review the disputed decision, hears testimony and evidence from the parties, and issues a written determination that sets forth the findings and the grounds for the decision. The fair hearing is the final process for dispute resolution available through the DVR. Either party who disagrees with the findings and the decision of an impartial hearing officer may file a civil action in any state court of competent jurisdiction or a district court of the United States of competent jurisdiction without regard to the amount in controversy.

For more information on the fair-hearing process and the rights and responsibilities of the parties during the fair-hearing process, please review the New Mexico Administrative Code Rule 6.101.2, which can be found on the State Records and Archive's website at: <https://www.srca.nm.gov/parts/title06/06.101.0002.html>.

#### **16.5.1 Requirements**

- A. A fair hearing must be held within 60 calendar days from the date of the request for the hearing. The hearing officer may extend the time limit upon the request of either

party for good cause shown. The time limit may also be extended upon the agreement of both parties.

- B. During the fair-hearing process, the parties have a right to be represented by a representative or an advocate.

### **16.5.2 Procedures**

- A. A participant or an applicant for vocational-rehabilitation services may request a fair hearing by submitting a written request to the DVR director within 45 calendar days of a disputed decision. The request should identify the contested decision and the counselor assigned to the case.
- B. The impartial hearing officer will be selected randomly or by agreement between the applicant or participant and the DVR director. An impartial hearing officer shall be selected from a pool of qualified impartial hearing officers established jointly by the State Rehabilitation Council and the DVR Director. The mediator shall not be an employee of the DVR.
- C. During the fair hearing, the parties are given the opportunity to present evidence, information, and witnesses and examine all witnesses and other relevant sources of evidence and information.
- D. The impartial hearing officer will issue a written decision within 30 calendar days of the completion of the fair hearing. The written decision will fully set forth the findings of the impartial hearing officer and the grounds for the decision.
- E. Upon receipt of the decision by the fair-hearing officer, the counselor is responsible for ensuring the implementation of the decision unless otherwise assigned by the area manager, the FOD, or the RSU deputy director.

### **16.6 Civil Actions**

- A. A participant who disagrees with the findings and decision of a hearing officer may bring a civil action in any state or federal court of competent jurisdiction.
- B. The civil action must be brought within thirty (30) calendar days of the hearing officer's final decision and in accordance with New Mexico Rules of Civil Procedure 1-074.
- C. Each party shall bear its own costs for the civil action including, but not limited to, filing costs and attorney fees. NMDVR shall not be required to pay for any costs related to the representation or travel of the applicant or recipient or the applicant's or recipient's representative.

## **17. Case Documentation**

### **17.1 Policy Statement**

The New Mexico Division of Vocational Rehabilitation (DVR) must maintain a record of services for each applicant and participant, including documentation supporting the eligibility determination, the IPE, case closure, and how the applicant or participant exercised informed choice throughout the rehabilitation process.

### **17.2 Case Files**

#### ***17.2.1 Guest Access for the DVR's Staff***

The Case-Management System is designed to promote confidentiality by limiting access to the electronic case record. Access is limited to the primary user, support users, backup users, and managers of the particular caseload. Guest access is a procedure that allows time-limited access to other staff to provide services or review potential transfers. For example, an assigned representative from a DVR grant program may be given access to a specific case for a case consultation. This eliminates the need to provide the hard case file or to make copies of specific items (except for medical or psychological records not contained within the Case-Management System). Guest access can be provided for a period of up to six months. The primary user sets up the guest access and parameters. For levels of security and the methods for establishing guest access, see the Case-Management System help section.

#### ***17.2.2 Case-Management System Case Documentation***

The client data Case-Management System is designed to document participant information from referral through closure. The various data pages capture information relevant to the particular status or action associated with the data page. Not all relevant information readily fits into headings provided for in the data pages, and it is incumbent upon the DVR's staff to use the application documentation, comment sections, and case notes to:

- A. document all relevant historical information;
- B. identify and address critical case questions;
- C. interpret medical, psychological, and vocational assessments;
- D. justify decisions related to eligibility decisions, IPE development, and case closure;
- E. document the DVR's efforts to facilitate informed participant choice, describing how each participant exercised informed choice throughout the rehabilitation process.
- F. Data Validation Documentation

Narrative sections located throughout the Client Data System data pages should also be used to ensure thorough documentation.



### **17.2.3 Case Notes**

Case notes are an ongoing record of significant events regarding participant activity related to the rehabilitation process and include analysis and synthesis of data relevant to the rehabilitation process. Any rehabilitation team member can enter documentation pertaining to their interaction with the participant. Case notes become critical due to the fact that online reviews are an option for eligibility decisions, IPEs, and case closure. The following are guidelines related to case notes:

- Case notes may only be changed or deleted to correct errors and cannot be changed after seven (7) days of entry.
- Case notes should be as long as necessary to convey the relevant information but should not report every detail of interaction with the participant or verbatim conversations unless such detail is significant to documenting problems or a rationale for decisions. The same applies to summarizing diagnostic, treatment, or progress reports.
- Email information, in whole or in part, may only be included if it is direct correspondence from and to the participant and only to the extent necessary to document service provision accurately. Information should be referenced in a case note and not cut and pasted into the body of the case note. PDF of the email must be uploaded to the Case-Management System. It should be filed under “correspondence” in the case file.
- Observations should be substantiated by witnessed behavior or factual information.
- Case notes pertain only to a participant’s rehabilitation program. Critical comments about other agency personnel, outside entities, procedures, or philosophical discourses are inappropriate.

### **17.3 Transfer of Cases**

Participants may request case transfer in accordance with Case Transfer Guidelines and Protocol Policy.

### **17.4 Mandatory Reviews**

#### **17.4.1 Annual Review**

An annual review of all Individual Plans for Employment (IPEs) is required. The Client Data System will prompt team members when an annual review is due. The annual review must be documented in the Client Data System. Federally mandated review of closed cases covers cases closed as too severe or unable to benefit from VR services from any status. Annual review (and annually thereafter if the participant requests) is required.

### **17.5 Protection, Use, and Release of Information**

Participant provision of information is voluntary, but failure to provide pertinent information may result in case closure or delay in case development. A copy of the "Authorization for Release of Records or Information" will be used to document records and information the participant has authorized the DVR to use or disclose. Retain a copy in the participant file, and provide a copy to the participant. The participant can revoke this authorization by writing to the organization that holds records or to the DVR counselor.

All information obtained by the DVR will be held confidential and will not be given to any person or agency without the participant's written consent except by court order. When staff members receive subpoenas for client records, the DVR staff attorney should be consulted immediately. The exception to this rule is through cooperative agreements between the DVR, the Social Security Administration, the United States Department of Labor, and the United States Human Services Department. Information related to employment status and wages can be provided to or requested from these agencies.

The DVR may use and disclose participant information without the participant's consent when considered necessary to reduce or prevent a serious threat to a participant's health and safety or the health and safety of another individual or the public. Participants have the right to file a complaint if they believe that their privacy rights have been violated. Complaints may be submitted, in writing, to the DVR or the Secretary of the United States Department of Health and Human Services:

State of New Mexico  
Division of Vocational Rehabilitation  
2935 Rodeo Park Drive East  
Santa Fe, NM 87505

OR

ATTN: Secretary  
Region IV, Office of Civil Rights  
U.S. Department of Health and Human Services  
1301 Young Street, Suite 1169  
Dallas, TX 75202

### ***17.5.1 Release to Other Agencies***

Information may be released to any other agency or individual with the participant's written consent unless it is prohibited from further release by the originating entity.

### ***17.5.2 Release to Participants***

Any information in the case file that the DVR generated must be released to the participant or their representative upon request. The only exception is in situations

where the counselor has good reason to believe that the information would harm the participant. In these situations, the information may be released to a representative of the participant as deemed appropriate in the counselor's judgment. Information requested not generated by the DVR may be released by the DVR unless otherwise prohibited by the originating agency, in which case a referral should be made to the originating agency.

### ***17.5.3 Other Releases***

Information requested for external audits, program evaluations, or research should be directed to the deputy director of Rehabilitation Services when such requests are not made through the participant's written consent. Information may be shared with any unit of the DVR for purposes related to the administration of the VR program without the client's written consent. Some information must be shared via a secured method with State employment-service partners under the Workforce Innovation and Opportunity Act (WIOA).

### ***17.5.4 Reproduction Costs***

Any out-of-the-ordinary costs for reproducing and sharing information with nonagency recipients not directly related to rehabilitation purposes will be borne by those recipients at rates set by the DVR.

### ***17.5.5 Ethical Issues***

The DVR's staff shall not abuse the privilege of viewing participant records. A staff member who is a personal friend or relative of a participant shall remove themselves from any involvement in the case, including viewing the case record or discussing the case with other staff members. The Client Services Impartial Services to Employees, Family Members, or Others and Confidential Case Policy shall be followed in all cases. Violations of this trust may be considered grounds for disciplinary action.