

g. Order of Selection

1. Pursuant to Section 101(a)(5) of the Rehabilitation Act, this description must be amended when the VR agency determines, based on the annual estimates described in description (f), that VR services cannot be provided to all eligible individuals with disabilities in the State who apply for and are determined eligible for services.

* VR agencies may maintain an order of selection policy and priority of eligible individuals without implementing or continuing to implement an order of selection.

The VR agency is implementing an order of selection and all eligible individuals will not be served.

2. For VR agencies that have defined priority categories describe—

A. The justification for the order

Between Fiscal Years (FYs) 2022 and 2024, the West Virginia Division of Rehabilitation Services (DRS) experienced a significant increase in the number of applicants, from about 4,900 in FY 2022 to over 7,200 in FY 2024. During this time period, the number of consumers served in each FY also increased from approximately 8,800 to over 15,600. Case service expenditures also continued to increase during this time, going from about \$19 million in FY 2022 to over \$48 million in FY 2024. While expenditures greatly increased, total available funding did not. The agency received about \$35 million in federal funding in FY 2022, \$40 million in FY 2023, and only \$31 million in FY 2024; state funding remained relatively constant at \$12 million during this time. DRS also serves a large number of students and youth with disabilities, accounting for over half of all applicants. These younger consumers tend to remain with the agency for many years and require high levels of funding for extended periods of time once under an Individualized Plan for Employment (IPE).

After being notified of a significantly lower amount of reallocated funds than requested (WVDRS was awarded less than \$3 million of the \$21 million it requested) at the end of FY 2024, the agency immediately began to take proactive, cost-saving measures and make fiscal and programmatic projections to determine if it needed to implement an Order of Selection (OS).

The agency used FY 2024 data, including the cost of services and number of consumers, to project the total cost of case services and number of consumers in FY 2025 (holding all things constant). Based on the available resources at the start of FY 2025, which includes approximately \$19 million in federal carryover funds from FY 2024 and \$29 million in FY 2025 available base allotment federal funds (the agency also receives approximately \$12 million in state funding), total available funds to the agency in FY 2025 were determined to be approximately \$60 million. The total projected administrative costs for FY 2025 are \$21 million, leaving \$39 million for all other costs, including case services. In FY 2024, the agency spent over \$49 million in case services. If case services remained constant in FY 2025, this would leave a deficit of \$10 million. However, as the agency continues to experience a large number of applicants, the projected deficit would be even higher, at approximately \$12.9 million, based on extrapolating current trends in early FY 2025. Using historical and projected case service data, the agency estimated a reduction in total

expenditures of \$12.94 million if individuals assigned to OS Categories 2 and 3 were placed on a waitlist for the remainder of FY 2025.

Because of cost-saving actions taken by the agency during FY 2025, coupled with additional factors such as a reduction in the number of applicants and the receipt of reallocated funds, the agency was able to carryover sufficient funds into FY 2026 and anticipates additional carryover funds into FY 2027 in excess of \$12 million. For example, case services expenditures were significantly reduced from approximately \$48 million in FY 2024 to \$26 million in FY 2025. Additionally, the number of applicants in FY 2025 fell to approximately 3,300 compared to over 7,000 in FY 2024. The agency projects these downward trends to continue through FY 2026, providing stability and more than adequate fiscal resources.

Therefore, due to the projected carryover into FY 2027 and sufficient human resources, the agency will no longer need keep OS categories closed. Beginning on February 1, 2026, DRS will be operating under an OS with OS Categories 1 and 2 open and OS Category 3 closed and beginning on May 1, 2026, DRS will be operating under an OS, with all categories open. Individuals on the waitlist in OS Category 2 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment February 1, 2026. Individuals on the waitlist in OS Category 3 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment May 1, 2026. Additionally, DRS has elected to continue to serve eligible individuals, regardless of any established OS, who require specific services or equipment to maintain employment.

DRS will closely monitor caseload size, staffing vacancies, and other related fiscal and programmatic data to ensure proactive measures are taken, if needed.

B. The order (priority categories) to be followed in selecting eligible individuals to be provided VR services ensuring that individuals with the most significant disabilities are selected for services before all other individuals with disabilities; and

The West Virginia Division of Rehabilitation Services (DRS) Director will determine whether resources will be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. If not, consistent with state and federal laws and regulations, the Director will establish restrictions regarding priority categories for selecting the order in which otherwise eligible individuals may be served. Prior to establishing and/or making changes to the OS, the Director will consult with the State Rehabilitation Council, the Client Assistance Program, Rehabilitation Services Administration, and other vocational rehabilitation stakeholders.

Beginning on February 1, 2026, DRS will be operating under an OS with OS Categories 1 and 2 open and OS Category 3 closed and beginning on May 1, 2026, DRS will be operating under an OS, with all categories open. Individuals on the waitlist in OS Category 2 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment February 1, 2026. Individuals on the waitlist in OS Category 3 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment May 1, 2026. Additionally, DRS has elected to continue to serve eligible individuals, regardless of any established

OS, who require specific services or equipment to maintain employment. Description of Priority categories Priority Categories

Following are the OS categories currently applicable to DRS' vocational rehabilitation program:

Category 1: Eligible applicants with the most significant disabilities.

Category 2: Eligible applicants with significant disabilities.

Category 3: Eligible applicants with non-significant disabilities.

The DRS Rehabilitation Counselor will determine the significance of an individual's disability after conducting a diagnostic study that allows for assessing the permanency of the disability, the number of functional capacities limited by the disability, the number of VR services needed, and the time in service required to complete those services. These criteria are used when determining whether the individual's disability is non-significant, significant, or most significant.

Definitions

Individual with a Most Significant Disability (MSD).

An individual who:

1. Has a permanent physical or mental impairment which seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerances, or work skills) in terms of an employment outcome; and
2. Will require multiple vocational rehabilitation services over an extended period of time.

Individual with Significant Disability (SD).

An individual who:

1. Has a permanent physical or mental impairment which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerances, or work skills) in terms of an employment outcome; and
2. Will require multiple vocational rehabilitation services over an extended period of time.

Individual with Non-Significant Disability.

An individual with a non-significant disability is an individual who:

1. Has a permanent disability that results in a substantial impediment to employment; and
2. Will not require multiple vocational rehabilitation services over an extended period of time.

Time in Service

For the purpose of determining significance of disability, "time in service" is considered to begin upon implementation of the Individualized Plan for Employment (IPE) and end upon entering Status 22 (in employment).

Automatic Classification as an Individual with Significant Disability

An individual who is a Social Security Disability Insurance (SSDI) beneficiary or Supplemental Security Income (SSI) recipient will be coded automatically as SD. However, if the individual meets MSD criteria, that designation will apply.

Recertification

An individual may be recertified from SD to MSD if all MSD criteria are met. In such instances, the DRS Rehabilitation Counselor will note appropriate circumstances in the Action Statement/Details section of the consumer's case record.

DRS Responsibilities when Implementing an Order of Selection

An OS has no impact on the DRS obligation for case finding and referrals. DRS has a continuing responsibility to make the public and referral sources aware of the services it has to offer individuals with disabilities, especially those with the most significant disabilities. Furthermore, DRS shall ensure its funding arrangements for providing services, including third party arrangements and establishment projects, are consistent with the OS. Any funding arrangements that are inconsistent with the OS will be renegotiated.

Priority of categories to receive VR services under the order OS Administration Process

All OS Categories will remain open during Federal Fiscal Year 2027, as long as sufficient fiscal and personnel resources remain available to provide VR services to all eligible applicants with most significant disabilities.

Services necessary for determination of eligibility and assessment of rehabilitation needs are provided to all DRS applicants. Any individual notified by the DRS Rehabilitation Counselor of classification as a member of an open priority category shall continue to receive services should that category later be closed provided they are under an IPE prior to the category being closed. Students with disabilities who receive Pre-Employment Transition Services (Pre-ETS) prior to being placed on a waitlist may continue to receive Pre-ETS while on the waitlist. However, students with disabilities not receiving Pre-ETS prior to being placed on the waitlist may not begin to receive Pre-ETS while on the waitlist..

Plan for Implementing the Order of Selection

Beginning on February 1, 2026, DRS will be operating under an OS with OS Categories 1 and 2 open and OS Category 3 closed and beginning on May 1, 2026, DRS will be operating under an OS, with all categories open. Individuals on the waitlist in OS Category 2 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment February 1, 2026. Individuals on the waitlist in OS Category 3 will be moved into service status and begin to receive services and development of their Individualized Plans for Employment May 1, 2026. Additionally, DRS has elected to continue to serve eligible individuals, regardless of any established OS, who require specific services or equipment to maintain employment.

DRS will strictly adhere to federal regulations in administering its OS. DRS will continue to: (1) implement the order on a statewide basis; (2) notify all eligible persons of their assignment to a particular priority category and their right to appeal this assignment; (3) assure continuity of services to all persons who were receiving services under an IPE prior to the effective date of the closure order; and (4) assure that funding arrangements are consistent with the OS [34 CFR 361.36(e)].

C. The VR agency's goals for serving individuals in each priority category, including how the agency will assist eligible individuals assigned to closed priority categories with information and referral, the method in which the VR agency will manage waiting lists, and the projected timelines for opening priority categories. NOTE: Priority categories are considered open when all individuals in the priority category may be served.

When the OS is implemented, DRS will continue to ensure that an eligible individual who is not assigned to an open OS category has access to services provided under the information and referral system [Section 101(a)(5)(D) of the Act]. Information and referral services include: (1) providing VR information and guidance to assist the individual to achieve employment and (2) appropriately referring the individual to other federal and state programs, including other statewide workforce development programs, that are best suited to meet the individual's specific employment needs [Section 101(a)(20)(A) of the Act].

When making a referral, DRS will provide the individual with:

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

DRS will continue to maintain the individual's service record to include documentation on the nature and scope of the information and referral services it provides to the individual and documentation on the referral itself [34 CFR 361.47(a)(13)].

Each individual placed on the waitlist will be contacted at least annually for a review. During the review, the individual or individual's representative will be contacted to ascertain whether any change of the individual's disability or functional limitations indicate that the current classification may no longer be appropriate or if the individual wishes to remain on the waiting list.

DRS will open and close priority categories whenever determined appropriate, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. To determine if a category or categories should be opened or closed, the agency will calculate the estimated cost of serving its existing consumers under an IPE. If excess resources are

available, the agency will determine if the amount is sufficient to serve additional consumers from the waitlist. DRS will use the individual's date of application to rank individuals within a priority category. This equitable and reasonable factor provides a method of selecting individuals from a waiting list when DRS has enough resources to serve some, but not all, individuals in that OS priority category. DRS will always prioritize serving all individuals in higher categories prior to serving individuals in lower categories.

The determination to close one or more OS Categories, as appropriate, will be made by the Director based on available resources. An assessment of the agency's fiscal and personnel resources will be conducted at least annually prior to the start of the next Federal Fiscal Year while continuing to plan for the future. This information will be paired with consumer-related data such as the number of individuals under an IPE, case service expenditures, and the number of applicants to enable the Director to determine if sufficient resources are available to keep all OS Categories open.

The following provides information on the service and outcome goals for individuals in the three Priority Categories: (1) Most Significantly Disabled, (2) Significantly Disabled, and (3) Non-significantly Disabled. Please note that the provided numbers for all categories are estimates and are difficult to predict accurately with the opening and closing of priority categories.

- Priority Category 1: In FY 2027, 4,095 individuals will be served; 307 will exit with employment after receiving services, while 717 individuals will exit without employment. Cost of services: FY 2027 \$9,850,371.47.
- Priority Category 2: In FY 2027, 6,549 individuals will be served; 587 will exit with employment after receiving services, while 1,247 will exit without employment. Cost of services: FY 2027 \$16,541,573.53.
- Priority Category 3: In FY 2027, 2,021 individuals will be served; 1,392 will exit with employment after receiving services, while 265 individuals will exit without employment. Cost of services: FY 2027 \$2,618,943.23.

3. Has the VR agency elected to serve eligible individuals outside of the order of selection who require specific services or equipment to maintain employment?

Yes