

## TITLE 32: REHABILITATION SERVICES

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# MDRS VOCATIONAL REHABILITATION PROGRAM POLICY MANUAL

## SECTION 1: MDRS GENERAL POLICIES

### INTRODUCTION

By the authority of Title I, Section 101 of the Rehabilitation Act of 1973, as amended, (hereinafter referred to as “the Act”), the Mississippi Department of Rehabilitation Services (hereinafter referred to as MDRS) has been designated the state unit responsible for the administration of the Vocational Rehabilitation (VR) portion of the Unified/Combined State Plan. MDRS accomplishes this responsibility through its Offices of Vocational Rehabilitation (OVR), Vocational Rehabilitation for the Blind (OVRB), and Business Development (OBD).

### 1.0 MDRS MISSION

It is the mission of MDRS to provide appropriate and comprehensive services to Mississippians with disabilities in a timely and effective manner.

All policy statements expressed within this Policy Manual reflect a commitment to the mission of the agency, the Act, and the policy, purpose, and guidance contained therein.

## 1.1 MDRS (OVR/OVRB) ASSURANCES

1. All policies in this manual have been reviewed by the State Rehabilitation Council (SRC).<sup>1</sup>
2. No individual or group of individuals is excluded or found ineligible on the basis of sex, age, race, color, religion, national origin, type of disability, duration of residence in Mississippi, citizenship, type of expected employment outcome, source of referral, particular service needs, anticipated costs of services required, income level of an applicant or applicant's family, employment history or current employment status, or educational status or current educational credential.<sup>2</sup> This applies to all locations in which rehabilitation services are provided by this agency, including One-Stop Centers.
3. MDRS accepts applications on anyone who is present in the state, including non-U.S. citizens. However, only those individuals who are legally authorized to work in the United States are eligible to receive services.
4. The staff of MDRS shall process referrals, take applications, determine eligibility or ineligibility for services, and provide services in a timely, prompt and appropriately equitable manner.
  - Application forms are made available statewide, particularly in the One-Stop Centers.<sup>3</sup>
  - Staff should contact referred individuals within 14 days by telephone, letter, or personal visit.
  - A good faith effort to inform individuals of application requirements, including the requirement that individuals who receive services under the program must intend to achieve an employment outcome, shall be made, and a specific time and place to meet should be scheduled.
  - Evaluations and services are provided in the most integrated setting possible, consistent with the individual's needs and informed choice, without undue delay.
  - An individual is considered to have submitted an application when the individual or his/her representative, as appropriate has, (a) completed and signed an agency application form or undergone common intake procedures

at a One-Stop Center or has otherwise requested services from MDRS, (b) has provided MDRS information necessary to initiate an assessment to determine eligibility and priority for services, and (c) is available to complete the application process.<sup>4</sup>

5. MDRS maintains compliance with the National Voter Registration Act of 1993. MDRS staff offers applicants the opportunity to register and assists with the registration process when needed. However, applicants are not required to register to vote or accept assistance in registering to vote to receive any of MDRS's services.
6. MDRS is dedicated to becoming the premier provider of services to individuals with disabilities and a trusted collaborator and strategic partner with businesses. Through its OBD, MDRS strives to recruit and educate businesses, assess and meet the needs of employers, and promote disability awareness in the community, in an effort to improve and increase employment outcomes for job seekers with disabilities.
7. MDRS will conduct aggressive outreach in order to identify and serve populations of individuals with disabilities that are unserved or underserved by the VR program, including ethnic minority groups and youth with significant disabilities.
8. MDRS will provide VR services to American Indians with disabilities residing in the state to the same extent as the state provides such services to other significant segments of the population of individuals with disabilities residing in the state. VR services will continue to be provided, including as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities on or near a reservation or a tribal service area eligible for services by special tribal programs.<sup>5</sup>
9. MDRS staff shall comply with the provisions of agreements between MDRS and other agencies and organizations; including those in the Mississippi Workforce Development System. These agreements provide for interagency cooperation that may include establishing interagency working groups; coordinating policies, practices, and procedures; identifying available resources; setting up a comprehensive information and referral system; and defining the financial responsibility of each agency for paying for necessary services and resolving disputes.<sup>6</sup>
10. MDRS will make available an information and referral system adequate to ensure that individuals with disabilities, (including eligible individuals who do not meet the agency's Order of Selection criteria for receiving VR services if the agency is operating on an Order of Selection), are provided accurate VR information and guidance using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining

employment; and will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system.<sup>7</sup>

In making these referrals, MDRS will refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce development system, best suited to address the specific employment needs of an individual.

11. MDRS will, when in the best interest of the consumer, utilize community rehabilitation programs (CRPs) to meet the identified needs of those persons served by the agency. In order to ensure quality of services provided by CRPs, MDRS will institute a mechanism for review and maintenance of CRP utilization statistics.
12. Mississippi Code, Section 37-33-157, gives MDRS direct purchasing authority for the purchase of services from a profit-making organization for the purpose of providing on-the-job training and related programs. Profit-making organizations may be utilized when they are better qualified than not-for-profit agencies and organizations to provide needed services. This can be determined based on past performance, quality of service, client satisfaction, and similar factors.
13. MDRS officially exercises the option of Establishment or Construction Authority.<sup>8</sup> In utilizing such special authority, MDRS will adhere to all applicable rules and regulations as set forth by the State of Mississippi, the Rehabilitation Services Administration, and the U.S. Department of Education. MDRS will use this authority for the establishment, development, or improvements of CRPs, including, under special circumstances, the construction of a facility and the provision of other services (including services offered at CRPs) which promise to contribute substantially to the rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual with a disability. Such programs will be used to provide services that promote competitive integrated employment.<sup>9</sup>

## 1.2 CLIENT ASSISTANCE PROGRAM

In accordance with requirements of Section 20 of the Act, OVR/OVRB/OBD will advise all individuals with disabilities (or their authorized representatives) seeking or receiving services through the agency of the purpose and availability of the Client Assistance Program (CAP), including the means to seek CAP assistance.

CAP is a service provider under federal grant, staffed and administered by a private, non-profit organization. Its purpose is to advise and inform clients,

client applicants, and other individuals with disabilities of all the available services and benefits under the Act.

### 1.3 INFORMED CHOICE

OVR/OVRB/OBD provides applicants and eligible individuals or, as appropriate, their representatives with opportunities to exercise informed choice throughout the VR process, including choosing a specific employment outcome, VR services, service providers, service provision, and methods for procuring services.<sup>10</sup>

To enable an individual to make such decisions, OVR/OVRB/OBD provides, through appropriate modes of communication, the information, support and assistance needed by the individual.

Information and assistance in the selection of services and service providers must include, at a minimum:<sup>11</sup>

- Cost, accessibility, and duration of potential services;
- Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;
- Qualifications of potential service providers;
- Types of services offered by potential providers;
- Degree to which services are provided in integrated settings; and
- Outcomes achieved by individuals working with service providers, to the extent that information is available.

Specifically, OVR/OVRB/OBD ensures that the individual, or if appropriate, the individual through his or her representative, including students/youth with disabilities who are transitioning from school to work:

- Makes decisions related to the assessment process and to selection of the employment outcome and the settings in which employment occurs, VR services, service providers, the settings for service provision, and the methods for procuring services;
- Has a range of options from which to make these decisions or, to the extent possible, the opportunity to create new options that will meet the individual's specific rehabilitation needs;
- Has access to sufficient information about the consequences of various options;

- Has skills for evaluating the information and for making decisions, or, to the extent possible, the opportunity to develop such skills or support and assistance in carrying out these functions;
- Makes decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and career interests; and
- Takes personal responsibility, to the extent possible, for implementing the chosen options.

However, informed choice does not mean unlimited choice. An individual's choice must be:

- Related to and necessary to achieve his/her employment goal;
- Cost effective, and
- Made pursuant to federal, state, and OVR/OVRB/OBD rules relating to purchasing and providing services.

While individuals are primarily responsible for making and carrying out decisions regarding their VR/VRB cases, they must also understand, those choices must be agreed to by their VR/VRB counselor.

#### 1.4 VOCATIONAL REHABILITATION SERVICES FOR EMPLOYEES OF MDRS

The practice for providing services to MDRS employees who have disabilities are the same as those for providing VR services to any person with a disability. Every case being considered for VR services must be subjected to the eligibility criteria established in Title I, Section 102(a) of the Act. These criteria are equally applicable to employees of MDRS who may apply for VR services.

An employee of MDRS who is seeking VR services should never confuse these services with having reasonable accommodations on the job. The concept of reasonable accommodations applies to the accommodations needed at the job site in order to function on the job. The use of comparable benefits must be evident in all rehabilitation programs. Employees can find instructions for submitting an accommodation request in the [MDRS P&P Manual](#).

#### 1.5 PUBLIC HEARING PROCEEDINGS ON PROPOSED POLICY CHANGES THAT SUBSTANTIALLY IMPACT SERVICES TO CLIENTS

1. Scope:

Public hearings will be held for the purpose of providing the public with an opportunity to make oral presentations on proposed new policies and amendments to existing policies that substantially impact services to clients.

2. Public Hearing Proceedings Timeline:

OVR/OVRB will conduct a public hearing proceeding within thirty (30) days after the first notice of public hearing is run in select regional and statewide newspapers on proposed policy or amendment to existing policies that substantially impact services to clients.

3. Requested Format:

Each request to comment must be printed or typewritten, or must be in legible handwriting. Each request to comment must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests to comment may be in the form of a letter addressed to the MDRS Executive Director and signed by the requestor(s).

4. Notification of Public Hearing Proceedings:

The date, time and place of all public hearing proceedings will be announced via notice in certain regional and statewide newspapers, public service announcements via Mississippi Public Radio, notice on the agency website, and press releases to numerous consumer organizations who represent or serve people with disabilities. The public hearing proceeding will be scheduled within thirty (30) days after the first notice of public hearing is run in certain regional and statewide newspapers.

5. Presiding Officer:

The Executive Director, or his/her designee, who is familiar with the substance of the proposed policy, shall preside at the public hearing proceeding on a proposed policy.

6. Public Presentations and Participation:

- (a) At a public hearing proceeding on a proposed policy, persons may make oral statements and make documentary

and physical submissions, which may include data, views, comments, or arguments concerning the proposed policy.

- (b) Persons wishing to make oral presentations at such a proceeding shall notify OVR/OVRB at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer, at his or her discretion, may allow individuals to participate that have not previously contacted the agency.
- (c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- (d) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the public hearing proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- (e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- (f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer, may in his or her discretion, interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

#### 7. Conduct of Oral Proceeding:

- (a) Presiding officer: The presiding officer shall have authority to conduct the proceeding at his or her discretion for the orderly conduct of the proceeding.

The presiding officer shall:

- call proceeding to order;
- give a brief synopsis of the proposed policy, a statement of the statutory authority for the proposed policy;

- call on those individuals who have contacted the agency about speaking on or against the proposed policy;
  - allow for rebuttal statements following all participant’s comments; and
  - adjourn the proceeding.
- (b) Questions: The presiding officer where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that policy-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- (c) Documentary Submissions: Submissions presented by participants in a public hearing proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency and are subject to the agency’s public records request procedure.
- (d) Recording: The agency may record oral proceedings by electronic means.

## SECTION 2: SERVICE RECORD

### 2.0 SERVICE RECORD POLICY STATEMENT

OVR/OVRB, with input from the State Rehabilitation Council, will maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, documentation including, but not limited to the individual’s application for VR services, the eligibility/ineligibility determination, the individual’s Individualized Plan for Employment (IPE), and information related to the closing of the service record.<sup>12</sup>

### 2.1 PURPOSE AND SCOPE

Service records are an indispensable tool OVR/OVRB/OBD uses to maintain and improve the quality of its operations and to test the effectiveness of the services it provides.

Good service records are essential for:

- Supervising and evaluating the effectiveness of the VR program;
- Ensuring the provision of counseling and planned services; and

- Verifying that service provision meets the criteria established by law and regulations.

The recorded information about a client should always be accurate and reliable. If there are any contradictory reports, they are to be fully explained or reconciled in the case record. Reported observations or generalizations about a client should be recorded in such a way that the reliability of the reports can be determined. The source of all recorded data about the client should be clearly indicated.

The service record should indicate the nature and extent of professional contribution to the progress of the case. It should include any problems the counselor encountered in working with the client or helping secure services from other community agencies. There should be enough information in the record to indicate whether treatment was successful, the client developed the vocational skills that were planned, and the counseling and guidance provided resulted in an improvement in the client's situation.

## 2.2 SERVICE RECORD

OVR/OVRB/OBD shall maintain in its records only such information about a client as is relevant and necessary to accomplish any purpose of the agency required by state or federal law, regulation, or policy.

The service record is a legal record and should be treated as such by all OVR/OVRB/OBD personnel. All service records are subject to legal subpoena and may be used as evidence in fair hearings or court proceedings. Therefore, opinion-based (non-factual) observations should not be entered into the record. Any information relating to the agency's evaluation of factual information should be labeled as such and should be stated as objectively as possible.

Records are to be maintained in an orderly, formal manner. All documentation must be legible and written in ink or typed and fastened in the folder in a timely fashion.

Records are to be secured to prevent any unauthorized access. Information is not to be given out indiscriminately, but must follow guidelines as set forth in the Confidentiality section of this manual (Section 3.0)

No information in the service record shall be removed, destroyed, or altered for purposes of avoiding compliance with these regulations.

## 2.3 REQUIRED DOCUMENTATION

To the degree applicable, each service record will contain the following documentation<sup>13</sup>:

1. If an applicant has been determined to be an eligible individual, documentation supporting that determination.<sup>14</sup>
2. If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination.<sup>15</sup>
3. Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility.<sup>16</sup>
4. If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.
5. If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration and documentation regarding the periodic assessments carried out during the trial work experiences.<sup>17</sup>
6. The IPE and any amendments to the IPE.<sup>18</sup>
7. Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific VR services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.
8. In the event that an individual's IPE provides for VR services in a non-integrated setting, a justification to support the need for the non-integrated setting.
9. In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals.<sup>19</sup>
10. Documentation of semi-annual and annual reviews must be in the service record when an individual:

- Achieves an employment outcome and is compensated in accordance with section 14(c) of the Fair Labor Standards Act;
- Is closed in extended employment because he/she was unable to achieve competitive integrated employment, or
- Made an informed choice to remain in extended employment.

This documentation must include input from the individual, and if appropriate, the individual's representative.<sup>20</sup>

11. Documentation concerning any action or decision resulting from a request by an individual for a review of determinations made by OVR/OVRB/OBD personnel.<sup>21</sup>
12. In the event that an applicant or eligible individual requests that documentation in the record of services be amended and the documentation is not amended, documentation of the request.<sup>22</sup>
13. In the event an individual is referred to another program through the OVR/OVRB/OBD information and referral system, including other components of the statewide workforce development system, documentation on the nature and scope of services provided to the individual and on the referral itself.<sup>23</sup>
14. In the event an individual's record of service is closed as achieved an employment outcome, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement.
15. In the event an individual's record of service is closed as achieved an employment outcome, documentation must also show<sup>24</sup>:
  - The individual achieved the employment outcome described in his/her IPE.
  - The individual maintained employment for not less than 90 days, achieved stability, and is determined to no longer require VR services.
  - The individual and his/her qualified rehabilitation counselor, in the employ of MDRS, agree the employment outcome is satisfactory and the individual is performing well on the job.
  - The individual is informed, through appropriate modes of communication, of the availability of Post-Employment Services (PES).

NOTE: Counselors will follow established procedures to ensure that each file contains source documentation for required elements of federal

reporting to ensure accuracy, validity and reliability of information reported.<sup>25</sup>

#### 2.4 REQUEST FOR AMENDMENT OF CASE INFORMATION

An applicant or client who believes that information in the service record is inaccurate or misleading may request that the agency amend the information. If the information is not amended, the request for an amendment and the reason for not amending must be documented in the service record.

#### 2.5 SERVICE RECORD RETENTION AND DISPOSAL

Federal and state regulations require the retention of closed service records for a period of three (3) years, beginning with the date of the final expenditure report for the year in which the record was closed.

All records must be shredded to prevent the accidental, inappropriate disclosure of confidential information. Each office is equipped with an industrial size shredder for this purpose.

The following situations may require records to be retained longer than three (3) years from exit:

1. All records involved in an administrative review and/or fair hearing must be maintained for three (3) years after a final decision is made.
2. If any litigation has been initiated, records will be retained until the resolution of all issues, or the end of the regular three-year period, whichever is later.
3. The records of clients closed in non-competitive, non-integrated, extended employment will be retained for three (3) years after the last review and reevaluation takes place.

Information entered into the agency's electronic case management system is retained indefinitely.

### SECTION 3: CONFIDENTIALITY

#### 3.0 CONFIDENTIALITY

OVR/OVRB/OBD hereby expresses the following written policies to safeguard the confidentiality of all personal information. These policies ensure that:

1. Specific safeguards are established to protect current and stored personal information;
2. All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;
3. All applicants or their representatives are informed about OVR/OVRB/OBD's need to collect personal information and the policies governing its use, including:
  - Identification of the authority under which information is collected;
  - Explanation of the principal purposes for which OVR/OVRB/OBD intends to use or release the information;
  - Explanation of whether providing requested information to OVR/OVRB/OBD is mandatory or voluntary and the effects of not providing requested information;
  - Identification of those situations in which OVR/OVRB/OBD requires or does not require informed written consent of the individual before information may be released; and
  - Identification of other agencies to which information is routinely released.
4. An explanation of state policies affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication.

### 3.1 STATE PROGRAM USE <sup>26</sup>

All personal information in the possession of OVR/OVRB/OBD is used only for the purposes directly connected with the administration of the VR program. Information containing identifiable personal information is not shared with advisory or other bodies that do not have official responsibility for administration of the program.

During program administration, OVR/OVRB/OBD may obtain personal information from service providers and cooperating agencies under

assurances that the information may not be further divulged, except as provided elsewhere in this section.

### 3.2 RELEASE TO APPLICANTS & RECIPIENTS OF SERVICES <sup>27</sup>

1. Except as provided elsewhere in this section, if requested in writing by an applicant or recipient of services, OVR/OVRB makes all requested information in that individual's record of services accessible and will release the information to the individual or the individual's representative in a timely manner.
2. Medical, psychological, or other information that OVR/OVRB determines may be harmful to the individual may not be released directly to the individual but must be provided to the individual through a third party chosen by the individual.

Third parties may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

3. If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

### 3.3 INTERNAL AUDIT AUTHORITY

MDRS' Office of Program Integrity is authorized to operate under MS Code § 25-65-17, which states: *The director and the internal audit staff shall have access to all personnel and any records, data and other information of the university, community/junior college or state agency deemed necessary to carry out assigned duties. The university, community/junior college or agency internal audit director shall maintain the confidentiality of any public records that are made confidential by law, and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.*

### 3.4 RELEASE FOR AUDIT, EVALUATION, & RESEARCH <sup>28</sup>

Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the VR program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if the organization, agency, or individual assures that:

1. The information will be used only for the purposes for which it is being provided;
2. The information will be released only to persons officially connected with the audit, evaluation, or research;
3. The information will not be released to the involved individual;
4. The information will be managed in a manner to safeguard confidentiality; and
5. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

### 3.5

#### RELEASE TO OTHER PROGRAMS OR AUTHORITIES <sup>29</sup>

1. Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, OVR/OVRB/OBD may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.
2. Medical or psychological information that OVR/OVRB determines may be harmful to the individual may be released if the other agency or organization assures OVR/OVRB that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.
3. OVR/OVRB/OBD must release personal information if required by federal law or regulations.
4. OVR/OVRB/OBD must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

5. OVR/OVRB/OBD also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

3.6

CONFIDENTIALITY STATEMENTS OF UNDERSTANDING

1. OVR/OVRB/OBD has established reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and has established policies and procedures governing access to records.
  - If duplication of records is requested, by a client or a client's personal representative, for that client's own use, no fees for reproducing those records shall be charged, unless the volume of such requested information is so extensive as to exceed 20 pages.
  - The agency may then charge the requesting party a fee of \$1.00 (one dollar) for each page in excess of 20 pages for the information.
  - Payment should be requested in the form of check or money order, payable to the "Mississippi Department of Rehabilitation Services." When funds are collected, a receipt will be issued to the purchaser. A duplicate receipt will be forwarded to the State Office along with the check or money order.
  - State or federal agencies providing services in direct correlation to a client's rehabilitation program, or any other agencies that have an exchange of information agreement with OVR/OVRB/OBD will not be charged a fee for records.
2. All confidential information acquired by the OVR/OVRB/OBD is the property of MDRS and shall remain so.
3. When OVR/OVRB/OBD makes a disclosure to any person or entity other than the client, the following or similar statement shall accompany the disclosure:

NOTICE

THIS IS CONFIDENTIAL INFORMATION FROM THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF REHABILITATION SERVICES. STATE AND FEDERAL LAW AND REGULATIONS PROHIBIT YOU FROM MAKING ANY FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT THE INFORMED WRITTEN CONSENT OF THE CLIENT TO WHOM THIS INFORMATION PERTAINS. ANY SUCH FURTHER DISCLOSURE COULD RESULT IN CIVIL OR CRIMINAL LIABILITY.

4. All applicants, clients, or client representatives are to be informed of the confidentiality of records. Release of such information must be by written consent of the client or authorized representative and must include:
  - Name of the client;
  - Designation of the parties to whom the information may be released;
  - Specifics of the information to be released;
  - Specific purposes for which the released information may be used;
  - Designation of the agency person authorized to disclose the information;
  - Dates of initiation and termination of consent; and
  - Signature of the client and/or client representative.
  - When confidential information is released, Form MDRS-010, “Disclosure of MDRS Client Records and Personally Identifiable Information” must be completed and placed in the case file.
5. In the direct course of providing VR services, an employee may disclose confidential information to other OVR/OVRB/OBD employees who have a legitimate need for the information without the prior consent of the client. In addition, OVR/OVRB/OBD may share confidential information on a need-to-know basis with trainees, interns, and volunteers who shall be bound by OVR/OVRB/OBD rules concerning confidentiality in the same manner as other employees.
6. If an employee of OVR/OVRB/OBD is subpoenaed for appearance in court, by law the employee must appear at the time and place indicated in the subpoena. Unless specific records are subpoenaed, no files or records should be taken into the courtroom.

When a client is involved in litigation or in an administrative proceeding and a subpoena for the production of only the client's records is received by OVR/OVRB/OBD, the employee receiving it shall do as follows:

- Contact his/her immediate supervisor for assistance; the supervisor will inform the agency's attorney and,
- The subpoenaed employee shall follow the appropriate procedures as directed.

7. Information in case records received from, or developed for, the Social Security Administration shall be controlled by the regulations governing confidentiality established by the Social Security Administration.

Please note, under federal law, a Member of Congress has a right to receive this information upon request. Congressional inquiries shall be forwarded to the Office of the Executive Director.

8. If information is requested concerning a deceased client, OVR/OVRB shall release such information only to the executor of a probated will or the administrator of the estate upon written proof of such status by the court. No other heirs or family members shall be given any information without a court order.

## SECTION 4: HEARING AND MEDIATION PROCEDURES

### 4.0 PURPOSE

OVR/OVRB ensures every applicant, or recipient of services, who is dissatisfied with any determination made by agency staff that affects the provision of VR services, is given the opportunity to request a timely review of that determination.

The individual, or if appropriate, his/her representative is informed in writing of his/her right to obtain a review through informal dispute resolution efforts, mediation or an impartial due process hearing:

1. At the time of application for services;
2. When assigned to a category in the agency's Order of Selection;
3. At IPE development; and
4. Whenever VR services for an individual are reduced, suspended, or terminated.

The individual, or if appropriate, his/her representative shall be provided with the names and addresses of the individuals with whom requests for mediation or due process hearings may be filed, the manner in which a mediator or impartial hearing officer may be selected, and the availability of the Client Assistance Program (CAP) to assist the individual during mediation sessions or impartial due process hearings. The information provided shall be made available in a mode of communication that is accessible (understandable) to the individual.<sup>30</sup>

Individuals who are found ineligible for VR services, and previously eligible individuals who are determined to be no longer eligible, are permitted to

challenge the determinations of ineligibility under the procedures described in this section.<sup>31</sup>

#### 4.1 INFORMAL DISPUTE RESOLUTION

OVR/OVRB has the authority to implement the informal review process when it is likely to result in a timely resolution of the issue(s) in disagreement. OVR/OVRB does not have the authority to require the applicant or client to use the informal review process or mediation prior to or instead of the provision of a formal hearing by an Impartial Hearing Officer. OVR/OVRB will not use the informal review process or mediation as a means to delay a formal review unless the parties jointly agree to the delay.<sup>32</sup>

The timing of the informal review and/or mediation must take into account the fact that should the informal process not result in a resolution of the dispute, the informal and formal process must be concluded within 60 days of the date the individual requests a review of the rehabilitation counselor's decision or determination, unless both parties agree to a specific extension of the time period.<sup>33</sup>

##### Informal Dispute Resolution Procedures

1. The manager, having line supervision over the staff whose determination is in dispute shall:
  - Contact the requestor to set an appointment (time, date, and place) for the informal review;
  - Advise the requestor of the availability and function of the CAP;
  - Advise the requestor that he/she may attend the review in person and, if he/she desires, be accompanied by a family member or an advocate from CAP; or any individual selected by the individual to represent him/her;
  - Contact the requestor if additional information is needed prior to the review; and
  - Offer mediation and/or an impartial hearing as a means of settling the dispute.
2. The requestor is to be notified immediately of the manager's decision. The manager may notify the requestor verbally of his/her decision; however, this is to be followed up with notification to the requestor via Certified Mail, return receipt requested, with a copy to the service record. The letter shall:

- State the matter(s) in dispute;
  - Include the rationale for the decision, and
  - Advise the requestor to notify the appropriate Office Director (verbally or in writing), no later than five days from the receipt of the letter, if he/she is dissatisfied and wishes to have the Director review the decision, wishes to have the dispute mediated, or proceed with the formal review.
3. The review by the Office Director is a document review and does not require the presence of the requestor.
4. The requestor is to be notified immediately of the Office Director's decision. The Office Director may notify the requestor verbally of his/her decision; however, this is to be followed up with notification to the requestor via Certified Mail, return receipt requested, with a copy to the service record. The letter shall:
- State the matter(s) in dispute;
  - Include the rationale for the decision;
  - Advise the requestor to notify the Office Director (verbally or in writing), no later than five days from the receipt of the letter, if he/she is dissatisfied and wishes to proceed with the formal review by an Impartial Hearing Officer;
  - Advise the requestor that an Impartial Hearing Officer will be selected at random from a list of qualified Impartial Hearing Officers; and,
  - Advise the requestor that mediators are available should he/she choose mediation as a means to settle the dispute.

NOTE: The requestor may stop the informal process, including mediation, at any point (or bypass it entirely) and request the dispute be sent to an Impartial Hearing Officer for a formal review.

Should the Informal Dispute Resolution process fail to resolve disagreements involving agency determinations that affect the provision of VR services, accessible mediation may be used if both parties agree to this method. Participation in the mediation process is voluntary on the part of the individual and on the part of the agency. Use of the mediation process is not used to deny or delay an individual's right to pursue resolution of the dispute through an impartial hearing held within the required time period or any other rights provided under this policy.

OVR/OVRB shall maintain a list of qualified and impartial mediators from which one may be selected, on a random basis, to mediate the dispute. This process shall be at no cost to the individual.

1. Each mediator on the list shall have knowledge of effective mediation techniques.
2. Mediation sessions shall be scheduled and conducted in a timely manner and shall be held in a location that is convenient to the parties in the dispute.
3. The individual, as a party to the dispute, has full discretion to choose an attorney, a guardian, a family member, a friend, or other person to serve as his/her advocate during mediation or a hearing.<sup>35</sup>
4. The parties to the mediation process shall sign a confidentiality pledge prior to the commencement of the mediation process. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
5. The agency will provide the individual or, as appropriate, his/her representative, an opportunity to submit during mediation sessions information that supports his/her position.<sup>36</sup>
6. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.
7. OVR/OVRB shall bear the cost of the mediation process except for any costs related to the representation of the individual.
8. All agreements reached by the mediation process shall be set forth in a written mediation agreement developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement will be sent to both parties.

*Mediator (Qualified and Impartial)* is an individual who:<sup>37</sup>

- Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);
- Is not a member of the OVR/OVRB State Rehabilitation Council;
- Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;
- Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;
- Has been trained in effective mediation techniques consistent with any State-approved or recognized certification, licensing, registration, or other requirements; and
- Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

An individual serving as a mediator is not considered to be an employee of the agency for the purposes of this definition solely because the individual is paid by the agency to serve as a mediator.

#### 4.3 IMPARTIAL DUE PROCESS HEARING

The impartial due process hearing is to be conducted and completed by an Impartial Hearing Officer within 60 days from the day the individual makes the original request for a review of a determination unless an informal resolution or a mediation agreement is achieved prior to the 60th day or both parties agree to a specific extension of time. This includes any days utilized as part of the informal review.<sup>38</sup> All Impartial Hearing Officers are selected at random from a list of qualified impartial hearing officers jointly identified by the agency and the SRC<sup>39, 40</sup>

1. The individual, or if appropriate, a parent, guardian, or other representative shall be furnished an opportunity to present additional witnesses, evidence and information to the Impartial Hearing Officer.

The individual or his/her representative will also be given the opportunity to be represented by counsel or other appropriate advocate and examine all witnesses and other relevant sources of information and evidence.<sup>41</sup>

2. The Impartial Hearing Officer must:<sup>42</sup>

- Make a decision based on the provisions of the approved VR portion of the Unified or Combined State Plan, the Act,<sup>43</sup> federal VR regulations, and state regulations and policies that are consistent with federal requirements; and
- Provide to the individual or, if appropriate, the individual's representative and to the agency a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing. CAP, if involved in the hearing, should also receive a copy of the report.

3. The Requestor Shall:

- Receive timely notice of all events and/or proceedings related to the hearing; and
- Be heard, present evidence, call witnesses, cross-examine witnesses, be represented by counsel at his/her own expense (if he/she so chooses), and receive a written decision based on the evidence.<sup>44</sup>

4. Once the Impartial Hearing Officer has established the date, place, and time of the hearing, written notice (in language understandable to the requestor) shall be provided to the requestor via Certified Mail, return receipt requested, and to the Executive Director of MDRS.

Such notice shall contain:

- The name and address of the requestor and the requestor's file number;
- The name and address (including the District/Region) of the requestor's counselor;
- A brief statement of the matter(s) in conflict;
- A brief statement of the date, place, and time of the hearing, and
- The right of the individual or, as appropriate, his/her representative, to submit information that supports his/her position.

5. Issues in dispute may be resolved informally at any point in the process by stipulation, agreed settlement, consent order, default, or by another method agreed upon by the parties. An informal disposition shall be reduced to writing, signed by the parties, and made a part of the record of the proceedings.<sup>45</sup>

The record of a formal review shall include:

- The notice of a formal review;
- A copy of the request for the review, specifying the matter(s) in dispute;

- The informal review decision(s), if any;
  - All evidence received during the review (informal and formal);
  - A statement of all matters officially noticed;
  - All questions, offers of proof, objections, and rulings thereon;
  - A transcript of the hearing proceedings; and,
  - The written decision of the Impartial Hearing Officer.
6. The hearing shall be recorded by a certified court reporter. A copy of the transcript may be requested by either party (in addition to the official copy) with the expense of transcribing and reproducing the copy being charged to that party. The record of the proceedings shall be confidential and maintained by OVR/OVRB.

#### Rules of Evidence

1. The technical rules of evidence shall be relaxed to the degree specified by the Impartial Hearing Officer.
2. All witnesses shall be sworn in by the court reporter, testify under oath, and be subject to cross-examination.
3. The Impartial Hearing Officer shall have the authority and discretion to admit into the record any and all evidence that has a reasonable degree of relevance to the dispute. The Impartial Hearing Officer shall have broad discretion to exclude evidence that is irrelevant, immaterial, or unduly cumulative to the matter(s) in dispute. Questions of admissibility should be decided in favor of admissibility even if only remotely relevant.
4. The Impartial Hearing Officer shall cause documents that are offered for admission into evidence to be marked and attached to the record of the proceedings.

#### Order of Proceedings

1. The requestor shall be the first to present his or her principle case. The case may be presented by direct examination of witnesses with an opportunity for cross-examination, redirect examination, and introduction of documentary evidence.
2. At the close of the requestor's presentation, the agency shall present its principle case. The agency shall be afforded the same opportunity for direct, cross and redirect examination of witnesses, and introduction of documentary evidence.

*Impartial Hearing Officer* is and individual who: <sup>46</sup>

- Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);
- Is not a member of the OVR/OVRB State Rehabilitation Council;
- Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;
- Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;
- Has received training with respect to the performance of official duties; and
- Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

#### 4.4 SUSPENSION, REDUCTION, OR TERMINATION OF SERVICES

The State unit may not institute a suspension, reduction, or termination of VR services being provided to an individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless: <sup>47</sup>

1. The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or
2. The agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

NOTE: OVR/OVRB/OBD, as an indirect provider, frequently provides services through other agencies or organizations that have their own eligibility rules. When such a service provider modifies or terminates a service, OVR/OVRB/OBD shall be obligated to assess the circumstances, and in concert with the client, make an appropriate and expedited amendment to the IPE.

#### 4.5 CIVIL ACTION

Any party who disagrees with the findings and decision of an Impartial Hearing Officer has a right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.<sup>48</sup>

In any such action, the court:

1. Receives the records related to the impartial due process hearing;
2. Hears additional evidence at the request of a party; and
3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

### SECTION 5: ELIGIBILITY

#### 5.0 ELIGIBILITY POLICY STATEMENT

OVR/OVRB counselors shall determine whether an individual is eligible for VR services within a reasonable period of time, not to exceed 60 *calendar* days after the individual has submitted an application for services. The eligibility determination period may be extended if:

1. Exceptional and unforeseen circumstances beyond the control of the counselor preclude the making of the eligibility determination within 60 days, and the counselor and the individual agree to a specific extension of time, or
2. The counselor is exploring an individual's abilities, capabilities, and capacity to perform in work situations through the use of Trial Work Experiences (TWE).<sup>49</sup> (See Section 5.7)

#### 5.1 ASSESSMENT FOR DETERMINING ELIGIBILITY AND PRIORITY FOR SERVICES

The assessment to determine eligibility for services is based on, as appropriate in each case:

1. A review of existing data to determine eligibility and assign an appropriate priority category for an order of selection;

2. To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment, or
3. To the extent additional data is necessary to make a determination of the employment outcomes, and the objectives, nature, and scope of VR services, to be included in the IPE of an eligible individual, a comprehensive assessment determines the unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice, including the need for supported employment, of the eligible individuals.

## 5.2 ELIGIBILITY CRITERIA

An individual is eligible for VR services when the following three (3) criteria have been met:

1. The individual has a physical or mental impairment;
2. The individual's impairment constitutes or results in a substantial impediment to employment; and
3. The individual requires VR services to prepare for, secure, retain, advance in, or regain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

NOTE: If an individual meets the first two (2) criteria, OVR/OVRB will assume he/she can benefit from services in terms of an employment outcome.<sup>50</sup> However, if the significance of the individual's disability prevents the VR counselor from making this assumption, the individual may participate in a TWE.

## 5.3 PRESUMPTION OF ELIGIBILITY FOR SSI/SSDI RECIPIENTS

Section 102(a)(3)(A) of the Act<sup>51</sup> states that an individual who has been determined to have a disability, or to be blind pursuant to either Title II or Title XVI of the Social Security Act shall be:

- Considered to be an individual with a significant disability<sup>52</sup>; and
- Presumed to be eligible for VR services (provided the individual intends to achieve a specific employment outcome) unless the agency can demonstrate by clear and convincing evidence, documented in the service record, that the individual is incapable of benefiting in terms of an employment outcome due to the severity of his/her disability.

Thus, valid documentation from the Office of Disability Determination Services (DDS) or the Social Security Administration (SSA) is sufficient to show that an individual meets the first two eligibility criteria.

However, if an individual asserts that he/she is eligible for SSI/SSDI but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the counselor must verify the individual's eligibility under title II or title XVI of the Social Security Act via contact with the SSA. This verification must be made within a reasonable period of time that enables the counselor to determine the individual's eligibility for VR services within 60 *calendar* days of the date of application.<sup>53</sup> No additional tests or procedures are used to assess "intent" of individuals who are SSI/SSDI recipients that would hinder timely access to VR services.

#### 5.4 DETERMINATIONS BY OFFICIALS OF OTHER AGENCIES

Determinations made by officials of other agencies, particularly education officials responsible for the public education of students with disabilities, regarding whether an individual is an individual with a disability, shall be used, to the extent appropriate, in assisting OVR/OVRB counselors in making eligibility determinations for VR services.<sup>54</sup>

#### 5.5 FUNCTIONAL LIMITATIONS AND SUBSTANTIAL IMPEDIMENTS TO EMPLOYMENT

A physical or mental impairment must be assessed in terms of the difficulties the impairment presents to the individual's ability to function vocationally. *Functional limitations* are defined as substantial impediments, directly related to an employment outcome, that result from the individual's disability in areas of communication, interpersonal skills, self-care, self-direction, mobility, work tolerance, and work skills.

*Substantial impediment* to employment means that a physical or mental impairment (in consideration of medical, psychological, vocational, educational, or other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining competitive integrated employment consistent with the individual's abilities, capabilities, and informed choice.

## 5.6

### COMPREHENSIVE ASSESSMENT

A comprehensive assessment shall be performed, to the extent necessary, in the most integrated setting possible consistent with the individual's needs and informed choice, to determine eligibility for and the scope of, VR and supported employment services. The assessment shall be sufficient to determine, and the service record shall document, whether an individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment. The assessment will include an appraisal of the individual based, to the extent possible, on available medical information, and, as appropriate, evaluation by qualified personnel of the potential to benefit from rehabilitation services.<sup>55</sup>

A comprehensive assessment may include evaluations in one or more areas, such as:

- Medical
- Psychiatric/psychological
- Personality
- Career interests
- Interpersonal skills
- Intelligence and related functional capacities
- Educational achievements
- Work experience
- Work behaviors
- Work in real job situations
- Vocational aptitudes
- Personal and social adjustments
- Employment opportunities
- Rehabilitation technology
- Other pertinent vocational, educational, cultural, social, recreational, and/or environmental factors

## 5.7

### TRIAL WORK EXPERIENCES (TWE)

TWEs are explorations of an individual's abilities, capabilities, and capacity to perform in realistic work situations provided in the most integrated setting possible consistent with the informed choice and rehabilitation needs of the individual.

A TWE is provided when there is insufficient assessment data to determine whether an individual can benefit from VR services in terms of a competitive integrated employment outcome. During TWEs, OVR/OVRB counselors must provide appropriate supports, including, but not limited to,

assistive technology devices/services and personal assistance services to accommodate the rehabilitation needs of the individual.<sup>56</sup>

TWEs must be of sufficient variety and over a sufficient period of time in order to determine if:<sup>57</sup>

1. There is sufficient evidence to conclude the individual can benefit from the provision of VR services in terms of an employment outcome; or
2. There is clear and convincing evidence that, due to the severity of the individual's disability, the individual is incapable of benefitting from VR services in terms of an employment outcome.

*Clear and convincing evidence* requires that staff have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome. Thus, the cursory review of existing information alone would not provide the degree of evidence needed. However, in those limited circumstances when the individual is unable to participate in a TWE, clear and convincing evidence could include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded they would be unable to meet the individual's needs due to the severity of his/her disability.

## 5.8 CERTIFICATION OF ELIGIBILITY

When an individual has been determined eligible for VR services, a Certificate of Eligibility shall be completed, dated, and signed by the OVR/OVRB counselor.

The Certificate of Eligibility shall show the individual:

1. Has a disability that results in a substantial impediment to employment;
2. Can benefit from specific VR services; and
3. Will require those services to prepare for, secure, retain, advance in, or regain employment.

## 5.9 DETERMINATION OF INELIGIBILITY

If an OVR/OVRB counselor determines that an applicant is ineligible for VR services or determines that an individual receiving services under an IPE is no longer eligible, the counselor must:<sup>58</sup>

1. Make the determination only after full consultation with the individual or, as appropriate, the individual's representative;
2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication, of the ineligibility determination, including the reasons for the determination, and the means by which the individual may express and/or seek remedy for any dissatisfaction (see Hearing Procedures, Section 4 of this manual);
3. Provide the individual with the contact information and a description of services available from the CAP;
4. Refer the individual to other workforce programs and/or service providers best suited to meet his/her rehabilitation needs, and
5. Review, within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome.

NOTE: This review need not be conducted in situations where the individual has refused a review, he/she is no longer present in the State, and his/her whereabouts are unknown, or his/her medical condition is rapidly progressive or terminal.

## SECTION: 6 ORDER OF SELECTION

### 6.0 ORDER OF SELECTION

It is the intent of OVR/OVRB/OBD to provide comprehensive VR services to all eligible individuals who apply. However, any time VR resources are not sufficient to serve all eligible individuals, an Order of Selection (OOS) for services shall be implemented. The OOS establishes a system of criteria for selecting individuals with the most significant disabilities giving them priority to receive services.

The OOS does not discriminate against any eligible individual on the basis of gender, age, race, creed, color, religion, national origin, citizenship, type of disability, duration of residence in Mississippi, public assistance status, source of referral, expected employment outcome, need for specific services, anticipated cost of services or income level of an individual or the individual's family.<sup>59</sup>

## 6.1

### DEFINITIONS

*Priority Category:* Classification to which eligible individuals are assigned based on the significance of their disability and the resulting functional limitations.

*Delayed Status:* When an individual is determined eligible to receive VR services but is assigned to a closed priority category in the OOS, the individual's name is placed on a federally sanctioned waiting list, until the agency has sufficient resources available to provide the services.

*Individual with a Disability:* Someone who has a physical or mental impairment that constitutes or results in a substantial impediment to employment and who can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. Individual with a disability can further be defined as someone who has a physical or mental impairment that substantially limits one or more major life activities and who has a record of such an impairment or is regarded as having such an impairment.<sup>60</sup>

*Individual with a Significant Disability:* Someone who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial limitation.<sup>61</sup>

## 6.2

### PRIORITY CATEGORY ASSIGNMENT

After a determination of eligibility, each individual will be classified and assigned to a Priority Category. The OOS system will in no way restrict the provision of diagnostic and evaluation services required for a determination of eligibility.

#### Priority Category 1—Most Significantly Disabled (MSD)

An individual with a most significant disability meets the definition of an individual with a significant disability (see Section 6.1) and:

- Has a severe physical or mental impairment that seriously limits three (3) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, and
- Will require multiple VR services for an extended period of time.

Priority Category 2—Significantly Disabled (SD)

An individual with a significant disability (see Section 6.1): <sup>62</sup>

- Has a severe physical or mental impairment that seriously limits one (1) or two (2) functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, and
- Will require multiple VR services for an extended period of time.

Priority Category 3—Disabled (D)

An individual with a disability (see Section 6.1): <sup>63</sup>

- Has a physical or mental impairment that results in a substantial impediment to employment and who can benefit, in terms of an employment outcome, from the provision of VR services.

NOTE: SSDI beneficiaries or SSI recipients are not afforded any special consideration in establishing the priority categories of the order, notwithstanding the automatic classification of such an individual as an ‘individual with a significant disability’.

6.3

IMPLEMENTATION OF THE ORDER OF SELECTION

When it is determined that VR does not have the resources to serve all eligible individuals in all Priority Categories, OVR/OVRB administration, in consultation with the SRC, will make the decision to begin closing Priority Categories beginning with Priority Category 3. The MDRS Executive Director will notify staff by Executive Director Memorandum when the OOS is to be implemented or withdrawn.

When OVR/OVRB implements an OOS, it will: <sup>64</sup>

- Do so on a statewide basis;

- Notify all eligible individuals, in writing, of the priority categories in the OOS and their assignment into a particular category and the right to appeal their category assignment, and
- Continue to provide all necessary services to all individuals who started receiving services prior to the effective date, regardless of the severity of the individuals' disabilities.

When an OOS is implemented, an IPE cannot be developed for individuals in a closed Priority Category. However, OVR/OVRB will provide all eligible individuals who do not meet the OOS criteria with information about, and referral to, other Federal or State programs that can assist those individuals in terms of an employment outcome.<sup>65</sup>

An individual may request an informal review, mediation, or fair hearing to appeal his/her Priority Category assignment. An individual's assignment to a Priority Category shall not be changed pending the outcome of the appeals process.

Furthermore, OVR/OVRB/OBD will elect to provide services, regardless of any established OOS, to eligible individuals who require specific services or equipment to maintain employment.<sup>66</sup>

#### 6.4 STUDENTS AND THE ORDER OF SELECTION

Students with disabilities are not exempt from any of the OOS requirements. A student with a disability who requires Pre-Employment Transition Services (Pre-ETS) and any additional VR services must apply and be determined eligible for VR services and have an IPE.

If a potentially eligible (PE) student with a disability begins one or more Pre-ETS, the PE student may continue to receive any and all Pre-ETS even if the student applies, is determined eligible, and placed in a closed priority category.<sup>67</sup> In addition to Pre-ETS, the student may participate in group transition services while in a closed priority category; however, the student may not receive any other individualized VR services, including transition services, until his/her turn for receiving VR services comes up under the OOS.

### SECTION 7: INDIVIDUALIZED PLAN FOR EMPLOYMENT

#### 7.0 INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)

OVR/OVRB must ensure that an IPE is developed for each individual determined eligible for VR services, or if the agency is operating under an Order of Selection (OOS), for each eligible individual in an open priority category.

An IPE is a formal written agreement between an eligible individual, or as appropriate his/her representative, and his/her VR/VRB counselor. The intended purpose of the IPE is to document and describe the required rehabilitation services necessary for an eligible individual to prepare for, secure, retain, regain, or advance in employment.

Individuals have the option of developing their IPE, on MDRS approved forms, with or without assistance from their counselor, representative, or chosen advocate;<sup>68</sup> however, the IPE does not go into effect until agreed upon and signed by the individual, or as appropriate, his/her representative, and his/her MDRS VR/VRB counselor.<sup>69</sup>

## 7.1 INFORMED CHOICE

Individuals will have the opportunity to exercise informed choice throughout the VR process. Informed choice allows individuals to become active participants in their rehabilitation by assisting them in making meaningful decisions about their VR needs and in selecting the most appropriate employment outcomes, the services needed to achieve the outcomes, entities providing such services, and the methods by which they can be secured.

In addition, informed choice will ensure the selection of a specific employment outcome based upon an objective assessment of the individual's specific situation, including his/her location, and current labor market trends. Informed choice will ensure that the specific employment outcome chosen by the individual is realistic and achievable given his/her unique strengths, resources, priorities, concerns, abilities, capabilities, and career interests.

See Section 1.3 for additional information.

## 7.2 IPE DEVELOPMENT

IPEs need to be developed as soon as possible, but no later than ninety (90) days following the determination of eligibility, unless the counselor and the individual agree to a specific extension of time.<sup>70</sup>

The eligible individual or his/her representative will be provided information in writing and, if appropriate, in a suitable mode of communication, regarding: <sup>71</sup>

1. The individual's available options for developing the IPE with or without assistance;
2. The full range of components that shall be included in an IPE as defined in Section 7.3;
3. As appropriate:
  - An explanation of OVR/OVRB guidelines and criteria for determining an individual's financial participation in his/her IPE;
  - Information on the availability of assistance in completing the designated agency forms required in developing an IPE;
  - A description of the rights available to the individual and information on the availability of the Client Assistance Program (CAP); and
  - Any additional information the eligible individual requests or OVR/OVRB determines to be necessary to the development of the IPE;
4. An IPE for a student with a disability receiving special education services is developed: <sup>72</sup>
  - In consideration of the student's Individualized Education Program (IEP) or 504 services;
  - In accordance with the plans, policies, procedures, and terms of the interagency agreement between MDRS and the local school district;
  - As early as possible in the transition planning process to ensure its completion before the student leaves the educational setting; and
  - In consultation with and signed approval from the student's parent and/or legal guardian.

### 7.3

#### IPE CONTENT

Each IPE must include:

1. The specific employment outcome chosen by the eligible individual that represents a goal of competitive integrated employment;
2. The specific VR services that are:
  - Needed to achieve a specific employment outcome, including, as appropriate, the provision of assistive technology devices and services, and personal assistance services, including training in the management of such services; and

- Provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual.
3. Timelines for the initiation of the services and achievement of the employment outcome;
  4. The entity(ies) chosen by the eligible individual or, as appropriate the individual's representative, that will provide the VR services and the methods used to procure such services;
  5. The criteria to evaluate progress toward achieving the employment outcome;
  6. The terms and conditions of the IPE, including as appropriate, information regarding the responsibilities of MDRS and the responsibilities of the eligible individual, including:
    - The responsibility the individual will assume in relation to the employment outcome;
    - The participation of the individual in paying for the cost of services, if applicable; and
    - The responsibility of the individual with regard to applying for and securing comparable benefits.
  7. For an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying: <sup>73</sup>
    - The supported employment services to be provided by the agency;
    - The expected extended services needed by the individual; and
    - The source of extended services or, to the extent that the source of the extended services cannot be identified at the time of IPE development, a description of the basis for concluding that there is a reasonable expectation such a source will become available.
  8. An assessment of the anticipated need for post-employment services.

#### 7.4

#### AMENDMENTS AND ANNUAL REVIEWS

If there are substantive changes in the employment outcome, the VR services to be provided, or the providers of the services, the IPE must be amended or revised. The individual or, as appropriate, his/her representative, in collaboration with a designated representative of MDRS or a qualified VR/VRB counselor will determine the specific changes needed. <sup>74</sup> Plus, as with the initial IPE, amendments will not take effect until agreed to and signed by the individual or, as appropriate,

his/her representative and by a qualified VR/VRB counselor employed by MDRS.  
75

Furthermore, a qualified VR/VRB counselor and the individual, or the individual's representative must review the IPE at least annually. This annual review is required to assess the individual's progress toward achieving the identified employment outcome. 76

## SECTION 8: SERVICES

### 8.0 SERVICES FOR INDIVIDUALS WHO HAVE APPLIED FOR OR BEEN DETERMINED ELIGIBLE FOR VR SERVICES

As appropriate to the VR needs of each individual and consistent with each individual's IPE, OVR/OVRB/OBD must ensure that the following VR services are available. These services are to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice: 77

1. Assessments for determining eligibility, priority for services, and VR needs by qualified personnel, including, if appropriate, assessments by personnel skilled in rehabilitation technology,
2. VR counseling and guidance, including information and support services to assist an individual in exercising informed choice,
3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system and to advise those individuals about client assistance programs,
4. Physical and mental restoration services, to the extent financial support is not readily available from another source other than the agency (such as through a comparable service or benefit),
5. Vocational and other training services, including personal and vocational adjustment training, advanced training; books, tools, and other training materials, except that no training services provided at an institution of higher education may be paid for by the agency unless maximum efforts have been made by the counselor and the individual to secure grant assistance in whole or in part from other sources to pay for that training,
6. Maintenance for additional costs incurred while participating in an assessment for determining eligibility and VR needs or while receiving services under an IPE,

7. Transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome,
8. VR services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome,
9. Interpreter services, including but not limited to: foreign language, sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel,
10. Reader services, rehabilitation teaching services and orientation and mobility services for individuals who are blind,
11. Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services. Business development services, internships, community based job tryout, on-the-job training, Work Opportunity Tax Credit, and employability skills training,
12. Supported employment services,
13. On-the-job or other related personal assistance services provided while an individual is receiving other services described in this section,
14. Specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment,
15. Occupational licenses, tools, equipment, and initial stock and supplies,
16. Rehabilitation technology services including vehicular modifications, telecommunications, sensory and other technological aids and devices,
17. Transition services for students and youth with disabilities, that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or pre-employment transition services for students,
18. Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome,

19. Customized employment; services designed to meet the specific abilities of the individual and the business needs of the employer, and
20. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

## SECTION 9: TRANSITION AND YOUTH CAREER SERVICES

### 9.0 VR TRANSITION COORDINATION

To effectively meet the needs of students/youth with disabilities, OVR/OVRB collaborates with education and other workforce programs to assist students with the transition from school to postsecondary education and/or to competitive integrated employment (CIE). To accomplish this, counselors are assigned to work with specific school districts to provide transition services, including Pre-Employment Transition Services (Pre-ETS), in accordance with the Rehabilitation Act of 1973, as amended.

Furthermore, MDRS maintains a 'Memorandum of Understanding' (MOU) with the Mississippi Department of Education (MDE) and an 'Agreement of Cooperation' for Transition Services with local educational agencies (LEAs) to help continue this collaboration.

This MOU with MDE is not intended to reduce the obligation under the Individuals with Disabilities Education Act (IDEA) of a LEA to provide or pay for any transition services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to students with disabilities within Mississippi.

### 9.1 DEFINITIONS

*Transition Services* are defined as a coordinated set of activities for students and youth with a disability which: <sup>78</sup>

- are designed within an outcome-oriented process that promotes movement from school to postsecondary activities, including postsecondary education, vocational training, Competitive Integrated Employment, continuing and adult education, adult services, independent living, or community participation and Supported Employment;
- are based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

- include instruction, community experiences, the development of employment and post-school goals, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;
- promote or facilitate the achievement of the employment outcome identified in the student’s or youth’s Individualized Plan for Employment (IPE); and
- include outreach to and engagement of the parents, or as appropriate, the representative of such a student or youth with a disability.

*Student with a disability* refers to an individual with a disability enrolled in a secondary, postsecondary, or other recognized education program who is no younger than fourteen (14) and no older than twenty-one (21) years of age, and is eligible for and receiving special education or related services under IDEA or is an individual with a disability for purposes of Section 504 of the Rehabilitation Act of 1973, as amended.<sup>79</sup>

*Youth with a disability* refers to an individual with a disability who is not younger than fourteen (14) years of age and is not older than twenty-four (24) years of age.<sup>80</sup>

*Potentially Eligible (PE)* refers to students who:

- meet the definition of “student with a disability”; and
- have not applied for and been determined eligible or ineligible for VR services.

PE students are not required to apply for and be determined eligible for VR services to receive Pre-Employment Transition Services (Pre-ETS). However, they can only receive Pre-ETS; should they need any additional VR services they must go through the application and eligibility determination process.

*Pre-Employment Transition Services (Pre-ETS)* is a specific set of services that are only available to eligible and potentially eligible students with disabilities. These services are intended to be the earliest set of services available to students with disabilities, and are designed to help students begin to identify career interests.

## 9.2

### PRE-EMPLOYMENT TRANSITION SERVICES (PRE-ETS)

OVR/OVRB, in collaboration with the LEAs involved, must provide, or arrange for the provision of, Pre-ETS for all students with disabilities who are in need of

such services. Pre-ETS must be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for VR services.<sup>81</sup>

PE students may receive Pre-ETS in a group or generalized classroom setting only, whereas VR eligible students may receive these services in a group or an individualized setting.

In addition, MDRS is required to reserve not less than fifteen (15) percent of its federal allotment, as well as, any funds made available from state, local, or private funding sources for the provision of Pre-ETS. Funds reserved and made available may be used for the *required, authorized, and pre-employment transition coordination* activities only. Administrative costs and/or any other costs associated with the provision of such services shall not be paid with reserved funds.<sup>82, 83, 84</sup>

### Required Pre-ETS

The five (5) mandated Pre-ETS activities that are required to be provided as needed are:<sup>85</sup>

1. *Job Exploration Counseling* is designed to assist students in exploring career options, develop motivation for employment, and understand the role of high school and postsecondary education and/or training.
2. *Work-Based Learning Experiences* use the workplace or realistic work situations to provide students with the knowledge and skills for future career opportunities. These experiences may be provided in school or after school or experiences outside the traditional school setting (including internships) that are provided in an integrated environment to the maximum extent possible.
3. *Counseling Opportunities for Enrollment in Comprehensive Transition or Postsecondary Education Programs* are used to explore the type of occupational training and postsecondary opportunities needed to succeed in the workplace.
4. *Workplace Readiness Training* is designed to develop social skills, independent living skills, and behaviors necessary for employment.
5. *Instruction in Self-Advocacy* supports a student's ability to effectively communicate, negotiate, and/or assert their own interest and/or desires, including the development of the skills necessary for self-determination. It may include peer mentoring.

### Authorized Pre-ETS<sup>86</sup>

Funds remaining after all the necessary required Pre-ETS activities have been provided may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by:

- implementing effective strategies that increase independent living and inclusion in their communities and competitive integrated work environment;
- developing and improving strategies for individuals with intellectual and significant disabilities to live independently, participate in postsecondary education experiences, and obtain and retain CIE;
- providing training to VR counselors, school transition staff, and others supporting students with disabilities;
- disseminating information on innovative, effective, and efficient approaches to implement Pre-ETS;
- coordinating activities with transition services provided by LEAs under IDEA;
- applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel;
- developing model transition demonstration projects;
- establishing or supporting multistate or regional partnerships that involve states, LEAs, MDRS, developmental disability agencies, private businesses, or others; and
- disseminating information and strategies to improve the transition to postsecondary activities of those who are traditionally unserved.

#### Pre-ETS Coordination Activities <sup>87</sup>

Funds reserved for Pre-ETS may also be used for four (4) coordination activities that consist of:

1. attending Individualized Education Program (IEP) meetings for students with disabilities (when invited);
2. working with local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities;

3. working with schools to coordinate and ensure the provision of Pre-ETS; and
4. attending person-centered planning meetings for students receiving services under title XIX of the Social Security Act (when invited).

### 9.3 PERSONAL DEVICES AND SERVICES FOR PARTICIPATION IN PRE-ETS

OVR/OVRB will help ensure that no student with a disability is denied the benefit of Pre-ETS because of the student's disability, impairments, or barriers. If an eligible or potentially eligible student requires reasonable accommodations/auxiliary aids or services to access or participate in any of the required Pre-ETS, OVR/OVRB must provide for such costs when no other public entity is required to provide such aid or service.

However, personal devices and services do not meet the definition of auxiliary aids and services under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended. Therefore, if a student with a disability requires personal devices, services, or individually- prescribed assistive technology, such as prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature, OVR/OVRB must work with the student to determine if he/she meets the eligibility criteria to receive VR services and develop an IPE for the provision of the needed individualized services.

### 9.4 COMPLETION OF PRE-ETS

Pre-ETS shall be discontinued once an individual no longer satisfies the definition of a 'student with a disability'. At the time of service discontinuation, the counselor will notify the student in writing.

Pre-ETS shall end for PE and VR eligible students when one of the following circumstances occurs:

- the student reaches 22 years old;
- the student is no longer participating in a secondary or postsecondary training program;
- the student chooses not to participate in, or continue participating in Pre-ETS, as confirmed by the student and/or guardian either verbally or in writing;
- the student has completed all of the requested Pre-ETS; or
- the PE student applies for VR services and an ineligibility decision is made.

9.5

### SERVICES FOR YOUTH WITH THE MOST SIGNIFICANT DISABILITIES

The Rehabilitation Act of 1973, as amended by WIOA, has put a heightened emphasis on the provision of services to youth with disabilities, especially those with the most significant disabilities.

OVR/OVRB serves youth with the most significant disabilities through VR's Supported Employment (SE) program. The SE program receives supplemental grant funds dedicated to the provision of SE services. MDRS is required to reserve and expend no less than fifty (50) percent of these funds to provide SE services, including extended services, to youth with the most significant disabilities.<sup>88, 89</sup>

Please refer to Section 11.1 of this manual for a description of SE and extended services.

## SECTION 10: FINANCIAL ACCOUNTABILITY

10.0

### FINANCIAL ACCOUNTABILITY

MDRS is committed to ensuring all funds are handled using sound financial management and proper accounting practices. Only those funds necessary for diagnostic, evaluation and other services, which lead to the attainment of an employment outcome, should be expended.

Policies are applied uniformly to all individuals in similar circumstances. Policies do not require different levels of need for different geographic regions in the state, and policies ensure that the level of an individual's participation in the cost of VR services is:<sup>90</sup>

- reasonable;
- based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and,
- not so high as to effectively deny the individual a necessary service.

10.1

### FINANCIAL NEEDS ANALYSIS

OVR/OVRB calculates an individual's financial participation rate by conducting a Financial Needs Analysis (FNA). MDRS sets the annual cost of living allowance (COLA), used in the FNA calculations, at three (3) times the federal poverty

guidelines. These guidelines are established by the Department of Health and Human Services (HHS) and published annually in the Federal Register.

MDRS chooses to consider the financial need of applicants who are receiving services through Trial Work Experiences (TWE) for purposes of determining the extent of their participation in the costs of VR services.<sup>91</sup>

Other VR services that require a financial needs test are:<sup>92</sup>

- Tuition, housing, and meals for academic training at a university, college or community college;
- All computers and software purchased for basic education or college training;
- Hearing aids;
- Home Modifications;
- Vehicle Modifications;
- Services to family members, and/or
- Post-employment services in the six (6) aforementioned service areas.

MDRS does not apply a financial needs test or require the financial participation of the individual as a condition for providing the following VR services:<sup>93</sup>

- Assessments for determining eligibility, priority for services, and VR needs;
- VR counseling and guidance;
- Referral and other services;
- Any auxiliary aid or services (e.g. interpreter or reader services);
- Job-related services;
- Personal assistance services; or
- As a condition for providing any VR service for individuals who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act.

## 10.2

### COMPARABLE SERVICES AND BENEFITS

Comparable services and benefits means services and benefits, including accommodations and auxiliary aids and services, that are:<sup>94</sup>

- Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
- Available to the individual at the time needed to ensure progress toward achieving the employment outcome in the individual's IPE; and
- Comparable to the services the individual would otherwise receive from MDRS.

NOTE: Comparable services and benefits do not include awards and scholarships based on merit.

VR services will be provided after a determination that comparable services and benefits are not available under any other program, unless such a determination would interrupt or delay: <sup>95</sup>

- The progress of the individual toward achieving the employment outcome stated in his/her IPE;
- An immediate job placement; or,
- The provision of VR services to any individual at extreme medical risk, based on medical evidence provided by an appropriate, qualified medical professional.

The following services are exempt from the determination of comparable services and benefits: <sup>96</sup>

1. Assessment for determining eligibility and VR needs by qualified personnel,
2. Counseling and guidance, including information and support services to assist an individual in exercising informed choice;
3. Referral and other services to secure needed services from other agencies including components of the statewide workforce development system, if such services are not available through this agency;
4. Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
5. Rehabilitation technology, including telecommunication, sensory, and other technological aids and devices; and,
6. Post-employment services consisting of the aforementioned services (in items 1- 5 in this list.)

### 10.3 OUT-OF-STATE SERVICES

If out-of-state services are requested when there are comparable services available in the state, the services must meet the same criteria in terms of comparable benefits, financial need, and determination of cost as in-state services.

### 10.4 FEE SCHEDULE

Federal cost principles require that costs for purchased VR services be allowable, reasonable, allocable to the program, and be relative to the benefit received. In keeping with these principles, OVR/OVRB has an established Fee Schedule to ensure the most cost effective use of federal

funding and a statewide consistency of client service purchases. The Fee Schedule represents the "maximum allowable fee" for medical services, equipment, supplies, and the like. Rates of payment for services provided in agency-operated facilities shall be determined by MDRS's facility cost reporting system.

10.5 STATE VENDOR CONTRACTS AND PURCHASING REGULATIONS

The State of Mississippi enters into contracts with vendors for certain goods and services on an annual basis. When state contracts are in effect, these items must be obtained from the vendor indicated on the contract. No bids are required.

Items not covered by the Fee Schedule or a state contract are subject to the Mississippi Public Purchases law.

10.6 AUTHORIZATIONS

Authorizations and expenditures for services will be made in accordance with all applicable:

- OVR/OVRB fee schedules;
- Operating agreements and contracts;
- State contract rates;
- Vendor's usual and customary charges; and
- State/federal laws, regulations, policies, and procedures.

NOTE: OVR/OVRB cannot supplement payments from any other source(s) in excess of the prevailing fee for services being purchased.

Authorizations will be issued only after a case has been placed in application status. A written authorization for services shall be made either before or at the same time as the purchase of the services. However, for individuals who have been determined eligible, in rare situations that might cause extreme medical risk or loss of placement, or like circumstances, an authorization may be made verbally. In such instances, there must be prompt documentation and the authorization must be confirmed in writing and forwarded immediately to the provider of the services.

Payment of a valid obligation may be approved when the eligible individual or authorized agency personnel have received the authorized goods or services and the vendor has signed, returned the authorization, and

supplied an invoice when required. State purchasing law requires payment within forty-five (45) days of receipt of authorized goods and services.

Documentation supporting the decision to obligate funds, change amounts obligated, and recommend payment must be present in the service record.

## SECTION 11: EMPLOYMENT

### 11.0 PURPOSE

The goals of the VR program are to help individuals with disabilities achieve equality of opportunity, full inclusion, and integration into the labor market to ensure an employment outcome, thereby creating opportunities for independence. The VR program intends to accomplish these goals by increasing employment opportunities and employment outcomes for individuals with disabilities through encouraging meaningful input from employers on successful and prospective employment and placement strategies.

### 11.1 DEFINITIONS

*Competitive Integrated Employment (CIE)* means work that: <sup>97</sup>

1. Is performed on a full-time or part-time basis (including self-employment) for which an individual is compensated at a rate that:
  - Is not less than the rate required under the current minimum wage law;
  - Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who have similar training, experience, and skills and who are not individuals with disabilities; 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 disabilities and who are self-employed in similar occupations.
2. Is eligible for the level of benefits provided to other employees; and is in a location where:
  - General working conditions demonstrate integration with other workers rather than separation or segregation;
  - The job is available to the general public;

- The individual is employed under the same working conditions as others in similar positions (e.g. work hours, rest room facilities, lunch or other break arrangements, entrances/exits; and
  - The individual has ongoing interaction on the job site, as part of their work responsibilities, with other workers without disabilities, supervisors, and the public to the same degree as workers without disabilities in the same or comparable occupations.
3. Presents, as appropriate, opportunities for advancement that are similar for other employees who are not individuals with disabilities and who have similar positions.

*Customized Employment* means CIE, for an individual with a significant disability, that is: <sup>98</sup>

1. Based on an individualized determination of the unique strengths, needs, and interests of the individual;
2. Designed to meet the specific abilities of the individual and the business needs of the employer; and
3. Carried out through flexible strategies, such as:
  - Job exploration by the individual;
  - Working with an employer to facilitate placement;
  - 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, specifics of supervision (including performance evaluation and review), and determining a job location;
  - Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and
  - Providing services and supports at the job location.

*Supported Employment* means CIE, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, is working on a short-term basis toward CIE that is individualized and consistent with the unique strengths, abilities, interests, and informed choice of the individual. <sup>99</sup>

Individuals in supported employment receive ongoing support services from their counselor, from the time of job placement, until they can be transitioned to extended services.

*Extended Services* are provided to assist individuals in maintaining their employment outcome after they have transitioned from the support of their counselor.<sup>100</sup>

*Employment Outcome* means, entering, advancing in, or retaining full-time or part-time CIE (including customized employment, self-employment, telecommuting, or business ownership), or supported employment that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.<sup>101</sup>

*Extended Employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides subminimum wage compensation in accordance with section 14(c) the Fair Labor Standards Act.<sup>102</sup>

## 11.2 USE OF SUBMINIMUM WAGE

Under Section 511 of the Rehabilitation Act of 1973, as amended, OVR/OVRB is obligated to provide Career Counseling and Information and Referral (CCIR) services to all individuals working in the state in subminimum wage employment. The purpose of the mandate is to ensure that individuals with disabilities have access to information and services that will enable them to achieve CIE.

Section 511 establishes two (2) requirements that must be met in order for a worker with a disability to be paid a subminimum wage, and they are:

1. Individuals with disabilities age 24 and younger (youth) must be provided with various services designed to improve their access to competitive integrated employment (CIE) *before* they are employed at a subminimum wage; and
2. All workers, including youth, must be regularly provided with career counseling and information as a condition of continued employment at a subminimum wage.

### Youth and Subminimum Wage<sup>103</sup>

Before a youth with disabilities can begin employment in a subminimum wage position, OVR/OVRB must provide him/her with documentation verifying the completion of three (3) requirements, which are:

1. Receipt of Pre-Employment Transition Services (Pre-ETS) under the VR program or Transition Services provided under the Individuals with Disabilities Education Act (IDEA);
2. Proof the youth applied for VR services and was found ineligible or documentation showing the youth applied for VR services, was found eligible, had an approved IPE, worked toward a suitable employment outcome for a reasonable period of time without success, and the VR service record was closed as non-rehabilitated; and
3. Receipt of Career Counseling and Information and Referral Services (CCIR).

Individuals (regardless of age) and Subminimum Wage <sup>104</sup>

Employers may not continue to employ an individual with a disability, regardless of age, at subminimum wage unless the individual receives CCIR at the appropriate intervals as established in Section 511.

CCIR, provided by OVR/OVRB, must be delivered in a manner that facilitates independent decision-making and informed choice, and shall be carried out once every six (6) months for the first year of the individual's employment at a subminimum wage, and annually thereafter for the duration of such employment.

It is the responsibility of the employers, who pay subminimum wages, to ensure their workers are referred to OVR/OVRB and receive CCIR as needed.

NOTE: Employers with less than fifteen (15) employees must also refer individuals with disabilities to OVR/OVRB to receive information on self-advocacy, self-determination, and available peer-mentoring training opportunities before continuing to pay subminimum wages.

11.3

SERVICES TO EMPLOYERS

MDRS' Office of Business Development (OBD) strives to set the stage for sustainable success for both individuals with disabilities and employers. To accomplish this, OBD focuses on developing ongoing relationships with, and providing a variety of services to, both public and private sector employers in an effort to increase employment opportunities for individuals with disabilities.

OBD assists individuals with disabilities and employers by: <sup>105</sup>

- Providing disability awareness training and education to promote inclusion in the workplace, as well as assist with the employment and retention of individuals with disabilities;

- Increasing opportunities for recruitment of skilled, qualified individuals with disabilities through work-based learning experiences (including job shadowing, internships, apprenticeships, and on-the- job training);
- Providing consultation, technical assistance, and support on the use of accommodations and assistive technology in the workplace to aid in the recruiting, hiring, and retaining of individuals with disabilities; and by
- Aiding in the utilization of incentives and other financial support, such as tax credits, that are available for the hiring or accommodating of individuals with disabilities.

## SECTION 12: CLOSURES

### 12.0 CLOSURES

Closure of an individual's service record occurs when the individual achieves: an employment outcome in a competitive integrated setting; declines services or refuses to participate; is not available to participate or is determined ineligible for services; does not meet the current order of selection priority and does not wish to remain on a waiting list; received services but did not achieve an employment outcome; or has completed post-employment services.

### 12.1 CRITERIA FOR CLOSING SERVICE RECORDS AS REHABILITATED <sup>106</sup>

The record of services of an individual who has achieved a competitive integrated employment (CIE) outcome may be closed as rehabilitated only if all of the following requirements are met:

1. The individual received VR counseling and guidance throughout the life of record.
2. The individual has achieved the employment outcome that is described in the individual's IPE and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
3. The individual has maintained the employment outcome for an appropriate period of time (a minimum of 90 days) to ensure stability, and it has been determined the individual no longer needs VR services.

4. At the end of the appropriate period of time, the individual and the qualified rehabilitation counselor employed by MDRS consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.
5. The service record contains documentation that the services provided under the individual's IPE, whether provided directly by OVR/OVRB/OBD or through service providers, contributed to the achievement of the employment outcome.
6. The individual is informed through appropriate modes of communication of the availability of post-employment services.
7. Additional Supported Employment provisions related to closure are:
  - The individual received supported employment services, as indicated in his/her IPE, prior to closure; and
  - The individual has transitioned to extended services that are not paid for with agency funds, but are provided through a comparable benefit or service.<sup>107</sup>

NOTE: There must be supporting documentation in the service record to document the individual's hourly wage at exit from the VR program. This information is required to verify the individual is compensated at a rate that meets the definition of CIE.

## 12.2 CLOSURE WITHOUT ELIGIBILITY DETERMINATION<sup>108</sup>

A counselor may not close an individual's record of services prior to making an eligibility determination unless:

- The individual declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and
- The counselor has made a reasonable number of attempts to contact the individual or, if appropriate, the applicant's representative to encourage the individual's participation.

## 12.3 CLOSURE DUE TO INELIGIBILITY<sup>109</sup>

If a counselor determines that an applicant is ineligible for VR services or determines that an individual receiving services under an IPE is no longer eligible, the counselor must:

- Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

- Inform the individual in writing, supplemented as necessary by other appropriate modes of communication, of the ineligibility determination, including the reasons for that determination, and the means by which the individual may express and seek remedy for any dissatisfaction;
- Provide the individual with a description of services available from the Client Assistance Program (CAP) and information on how to contact the program;
- Refer the individual to other programs in the statewide workforce development system, or other federal, state or local programs and/or service providers best suited to meet his/her rehabilitation needs; and
- Review, within 12 months and annually thereafter if requested by the individual or his/her representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

#### 12.4

#### CLOSURE IN EXTENDED EMPLOYMENT <sup>110</sup>

Some individuals are placed in extended [sheltered] employment earning less than minimum wage under a sub-minimum wage certificate issued by the U.S. Department of Labor. This is legal and appropriate for some individuals, but this type of employment outcome is not considered CIE.

Criteria:

1. Before an individual's service record is closed in extended employment, the counselor must include documentation that the individual is unable to achieve CIE or that the individual made an informed choice to remain in extended employment.
2. A semi-annual review and reevaluation of the status of the individual must occur for two years after the individual's record of services is closed (and annually thereafter) to determine the interests, priorities, and needs of the individual with respect to achieving or training for CIE.
3. The counselor must enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services.

Documentation must also include:

- The individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and
- A description of the efforts to identify and provide VR services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in CIE.

12.5 CLOSURE AS NON-REHABILITATED

If, for intervening reasons, an applicant does not reach a CIE outcome and no further services can be justified or are appropriate, the individual's service record is closed as non-rehabilitated.

12.6 CLOSURE FROM DELAYED STATUS

Closures in this category are for individuals who were determined eligible for VR services but did not meet the current Order of Selection criteria, and the service record never advanced to service status.

## REFERENCES

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- 1 Rehabilitation Act of 1973, as amended Sec.101(a)(21)(A)(ii)(II)  
 2 34 CFR 361.42(c)  
 3 Section 121(b)(1)(A)(i) of the Workforce Innovation and Opportunity Act (WIOA)  
 4 34 CFR 361.41(b)(2)  
 5 Section 101 (a)(13) and Section 121 of the Rehabilitation Act of 1973, as  
 amended  
 6 Section 101 (a)(11) of the Rehabilitation Act of 1973, as amended  
 7 34 CFR 361.37(a)  
 8 Section 101(a)(17) the Rehabilitation Act of 1973, as amended  
 9 Section 103(b)(2) and Section 104 of the Rehabilitation Act of 1973, as amended

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10 Section 102(b)(3)(B) of the Rehabilitation Act of 1973, as amended  
11 34 CFR 361.52(c)  
12 34 CFR 361.47(a) & (b)  
13 34 CFR 361.47  
14 34 CFR 361.42  
15 34 CFR 361.43  
16 34 CFR 361.44  
17 34 CFR 361.42(e)  
18 34 CFR 361.46  
19 34 CFR 361.5(c)(9)(i)  
20 34 CFR 361.5 (c)(15); 361.47 (a)(10) & 361.55  
21 34 CFR 361.57  
22 34 CFR 361.38(c)(4)  
23 34 CFR 361.37  
24 34 CFR 361.56  
25 WIOA section 116(d)(5)  
26 34 CFR 361.38 (b)  
27 34 CFR 361.38 (c)  
28 34 CFR 361.38 (d)  
29 34 CFR 361.38 (e)

Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A)

30 34 CFR 361.57 (a) and (b)(1)(2)  
31 34 CFR 361.57 (b)(5)  
32 34 CFR 361.57 (c)  
33 34 CFR 361.57 (e)(1)  
34 34 CFR 361.57 (d)  
35 34 CFR 361.57 (b)(3)(ii)  
36 34 CFR 361.57 (b)(3)(i)  
37 34 CFR 361.5 (c)(43)  
38 34 CFR 361.57 (e)(1)  
39 State Rehabilitation Council  
40 34 CFR 361.57 (f)(1) and (2)  
41 34 CFR 361.57 (b)(3)  
42 34 CFR 361.57 (e)(i)(ii)  
43 Rehabilitation Act of 1973, as amended  
44 34 CFR 361.57 (e)(2)  
45 34 CFR 361.57 (c)  
46 34 CFR 361.5 (c)(24)  
47 34 CFR 361.57 (b)(4)  
48 34 CFR 361.57 (e)(4) and (i)(1)  
49 34 CFR 361.41 (b)  
50 34 CFR 361.42 (a)(2)  
51 Rehabilitation Act of 1973, as amended  
52 Section 7(21)(A) of the Act

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53 34 CFR 361.42 (a)(3)(B)(ii)  
54 34 CFR 361.42 (d)(1)(i)  
55 Section 7(2) of the Act and 34 CFR 361.5 (c)(5)  
56 34 CFR 361.42 (e)(2)(B)(iv)  
57 34 CFR 361.42 (e)(2)(iii)(A) and (B)  
58 34 CFR 361.43  
59 34 CFR 361.36 (d)(2)  
60 34 CFR 361.5 (c)(27) & (28)  
61 34 CFR 361.5 (c)(30)(iii)  
62 34 CFR 361.5 (c)(30)  
63 34 CFR 361.5 (c)(27)  
64 34 CFR 361.36 (e)(1)(2)(3)  
65 34 CFR 361.36 (a)(3)(iv)(B)  
66 34 CFR 361.36 (a)(3)(v)  
67 34 CFR 361.36 (e)(3)(i)  
68 34 CFR 361.45 (c)(1)  
69 34 CFR 361.45 (d)(3)  
70 34 CFR 361.45 (e)  
71 34 CFR 361.45 (c)(2)  
72 34 CFR 361.22 (a)(2) and 361.45 (d)(9)  
73 34 CFR 361.46 (b)(1,2,3)  
74 34 CFR 361.45 (d)(6)  
75 34 CFR 361.45 (d)(7)  
76 34CFR 361.45 (d)(5)  
77 34 CFR 361.48 (b)  
78 34 CFR 361.5 (c)(55)  
79 34 CFR 361.5 (c)(51)  
80 34 CFR 361.5 (c)(58)  
81 34 CFR 361.48 (a) & (a)(1)  
82 Section 110 (d) of the Rehabilitation Act of 1973, as amended  
83 34 CFR 361.65  
84 34 CFR 361.48 (a)  
85 34 CFR 361.48 (a)(2)  
86 34 CFR 361.48 (a)(3)  
87 34 CFR 361.48 (a)(4)  
88 34 CFR 363.22  
89 Section 603(d) of the Rehabilitation Act of 1973, as amended  
90 34 CFR 361.54 (b)(2)  
91 34 CFR 361.54 (b)(1)  
92 34 CFR 361.54 (b)(2)(i)(B)  
93 34 CFR 361.54 (b)(3)  
94 34 CFR 361.5 (c)(8)  
95 34 CFR 361.53 (a)  
96 34 CFR 361.53 (b)  
97 34 CFR 361.5 (c)(9)  
98 34 CFR 361.5 (c)(11)

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| 99  | 34 CFR 361.5 (c)(53)                                       |
| 100 | 34 CFR 361.5 (c)(19)(iv)                                   |
| 101 | 34 CFR 361.5 (c)(15)                                       |
| 102 | 34 CFR 361.5 (c)(18)                                       |
| 103 | Section 511 (a)(2), Rehabilitation Act of 1973, as amended |
| 104 | Section 511 (c)(1), Rehabilitation Act of 1973, as amended |
| 105 | 34 CFR 361.32  |
| 106 | 34 CFR 361.56  |
| 107 | 34 CFR 363.55  |
| 108 | 34 CFR 361.44  |
| 109 | 34 CFR 361.43  |
| 110 | 34 CFR 361.55  |