



EDUCATION AND  
LABOR CABINET



# **KY Office of Vocational Rehabilitation (OVR) Order of Selection**

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Overview of Order of Selection federal and state regulations, process for implementation, and state impact.

[kcc.ky.gov/Vocational-Rehabilitation](http://kcc.ky.gov/Vocational-Rehabilitation)

# Order of Selection

What it means to seek Order of Selection (Order of Selection) implementation, the process to obtain approval of Order of Selection and the history of Order of Selection for Kentucky OVR.

# What is an Order of Selection

- The utilization of the Order of Selection is the appropriate mechanism as defined within the Rehabilitation Act for vocational rehabilitation programs to manage the consumer caseload when there is insufficient funding or staffing to support the demand.
- In an Order of Selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services.
- Utilizing the Order of Selection will allow OVR time to adjust programs and implement additional cost saving measures under the assumption that flat funding may continue.

# Ability to Serve All Eligible Individuals

34 CFR Part 361.36 and 34 CFR Part 361.36(c)(2)

Ability to serve all eligible individuals; order of selection for services (in part):

The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection. If the designated state unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of the fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals.

# Order of Selection Services

## 34 CFR Part 361.36 – Order of Selection for Services

- In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and
- (B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under §361.37; and
- (v) State whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

# **Order of Selection Implementation Process**

# Order of Selection Implementation Process (1)

Order of Selection is an extensive process that has multiple layers of discussion before seeking to implement.

- Agency leadership along with Cabinet fiscal staff review financial resources, long-range fiscal forecasting, personnel projections, etc. This information helps determine if the full range of services can be provided as required.

# Order of Selection Implementation Process (2)

- The U.S. Department of Education, Rehabilitation Services Administration (RSA) is notified of plan in consideration.
  - The current State Plan Amendment is reviewed for any needed updates.
- Consultation is held with the Technical Assistance Centers, State Rehabilitation Council, Client Assistance Program and internal leadership.
- Public hearings are held for comments.
- Approval of implementation date is made by RSA.



# Cost Saving Measures to Consider

- Personnel actions discontinued and vacancies scrutinized for necessity to fill. Release of initial probation employees and temporary employees reviewed, considered and implemented if approved.
- Non-consumer purchases reviewed for essential only
- Capital projects cease except those required for mechanical or programmatic purposes
- Travel scrutinized: Out-of-state travel with agency funds stopped. In state travel limited to consumer focused and staff conference participation is essential only.

# Financial Need - Consumers

There is no federal requirement that financial need be considered, but the State may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those identified as exempt from these. 34 CFR 361.54

# Financial Need – State Reg

This is referred to in federal regulation as Financial Need but is also sometimes called Economic Need or Cost-Sharing.

**State regulation – 781 KAR 1:030 Section 2(2) – Economic Need** - requires the executive director to exempt services from economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 CFR 361.53.

# Order of Selection

## Financial/Economic Need

- Upon determination that the state agency does not have sufficient funds to serve all eligible individuals, the agency Economic Need testing is reinstated.
- 781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services provides a full list of services that may or may not be impacted by economic need testing.

<https://apps.legislature.ky.gov/law/kar/titles/781/001/030/>

# Order of Selection

## Historical Info

The former Kentucky Office for the Blind, Kentucky Office of Vocational Rehabilitation and current Kentucky Office of Vocational Rehabilitation (combined agency) have previously been in Order of Selection.

# Historic Order of Selection Documentation

- The Office of Vocational Rehabilitation federal state plan amendments show that the agency has had one or more categories closed for 37 of the past 42 years.
- The 5 years of open categories began April 2020.

# State Plan Amendment Data

FFY	Number of Categories	Categories Open	Categories Closed	Other/Notes	All Categories Open?
1983	Reduced 9 to 6	—	—	—	No
1983-1994	6	Served as few as 3 and as many as 5	—	—	No
1996	6 Categories/Updated with Functional Limitations	4 of 6 open	5 & 6	—	No
2009	Reduced to 5 Categories	—	—	—	No
2010	5	1 and 2 only	3,4, & 5	—	No
2011	5	1, 2, and 3	4 & 5	Serve PC4 from waitlist	No
2016	4	1	2,3, & 4	—	2018 when OVR/OFB merged
2016	5	1, 2, & 3	4 & 5	Serve from waitlist if Possible	No
2018	4	1	2, 3, & 4	Year of OFB/OVR Merge	No
2020	4	1, 2, & 3	4	Monitor 4 to serve from Waitlist	No
2020	4	All	None	April 2020 All Categories Opened	Yes
2024	4	All	None	—	Yes

# Current Categories

The agency is required to identify Order of Selection categories within their state plan. The following outlines the current categories. This section also defines functional capacities that further defines the categories.



# Current Order of Selection Categories in KY

**Priority Category 1:** Eligible individuals with a most significant disability that limits three (3) or more functional capacities.

**Priority Category 2:** Eligible individuals with a most significant disability that limits two (2) functional capacities.

**Priority Category 3:** Eligible individuals with a significant disability that limits one (1) functional capacity.

**Priority Category 4:** Eligible individuals with a non-significant disability.

# Functional Capacities Defined (1)

**Functional Capacity is a person's ability to perform daily tasks and activities.**

- **MOBILITY** - limitations moving efficiently from place to place.
- **SELF CARE** - limitations in skills needed to fulfill basic needs related to health, safety, hygiene, and financial management.
- **WORK TOLERANCE** - limitations carrying out physical and/or cognitive work tasks in an efficient and effective manner over a sustained period of time.
- **INTERPERSONAL SKILLS** - limitations interacting in a socially acceptable, mature manner with colleagues and the public to facilitate the normal flow of work activities.

# Functional Capacities (2)

- **WORK SKILLS** - limitations in critical skills needed to carry out essential work functions such as functional academics, motor skills, processing speed, memory, and communication.
- **COMMUNICATION** - limitations accurately and efficiently transmitting or receiving information verbally or non-verbally.
- **SELF-DIRECTION** - limitations in planning, initiating, and monitoring behavior with respect to a desired outcome that serves to benefit the individual.

*These capacities are standard across all states.*

# Staff Training and Forms Revision

As a component of Order of Selection implementation, there are required updates for staff training, agency forms and the Case Management System

# Staff Training on Order of Selection

During the approval process, the agency establishes needed training for staff for any updates on the state plan amendment, implementation procedures, impact on the case management system process, etc. This is in preparation for Order of Selection implementation but updates to processes are not put into place until the implementation date is approved.

# Services impact when Order of Selection is implemented

The following slides layout the implementation process and identifies the potential impacts for consumers, workforce partners and providers. The program impacted by Order of Selection is Statewide.

# Consumers – IPE Implemented

- Upon Order of Selection approval, consumers with an implemented Individualized Plan for Employment (IPE) – regardless of their assigned priority category – will continue to be served.
- Currently, there are more than 15,000 implemented plans that will continue without interruptions to services.
- If plans implemented require revisions, that can also be done.

# Consumers – IPE Not Implemented

- Upon Order of Selection approval, consumers determined eligible but assigned to a closed priority category will be placed on a waiting list until funds are available to serve them.
- Individuals determined eligible in a closed category have the option to develop their Individualized Plan for Employment (IPE), but it cannot be implemented until they are removed from the wait list. They also have the choice to wait and develop their IPE when they are removed from the wait list.



# New Referrals – What to Expect

- Upon receipt of a referral, a counselor will schedule a meeting to complete an application for OVR services. At the meeting the applicant will be informed about Order of Selection and the possibility that they may be placed on a wait list.
- The counselor will process the application and determine eligibility within 60 days, or longer if an extension is needed and agreed to by the consumer.
- If the individual is determined eligible, they will be assigned to a Priority Category based on their functional limitations.

# Written Notification - Order of Selection

Each consumer placed on a waiting list will be notified in writing of:

- The priority category definitions.
- Their priority category assignment.
- The possibility of reclassification if OVR is alerted to a change in the individual's circumstances or due to misclassification.
- The right to appeal the category assignment.
- Contact information for other employment programs.

# Removal from the Wait List

- OVR will evaluate its ability to serve consumers on a quarterly basis.
- When financial resources are available, those in Priority Category of Most Significant Disability will be served first based on their eligibility date. Consumers can be served from the wait list as funds allow.
- When it is determined that all consumers in a category can be served and the category is opened, those on the wait list will be released based on the date they were determined eligible.
- A consumer on a wait list may request to be removed from the wait list if they choose to do so.

# Ticket to Work Information

Ticketholders also have potential resources through Employment Networks for services.

These individuals can be directed to the WIPA Program and/or [ky.db101.org](https://ky.db101.org) for benefit information.

# Impact on Partners and Employers

# Impact on Providers

- Authorized services may continue under a current IPE for active consumers.
- No new consumers should begin receiving services paid for by OVR until the provider receives priority authorization.
- OVR will evaluate its ability to serve consumers on a quarterly basis and if consumers are brought into the system and approved for services, the provider will receive a written authorization for the services.
- Providers who are unsure of whether or not services can be provided to specific individuals, should contact their local OVR office on a case-by-case basis. Services must not be provided to individuals whose written authorization service delivery dates have ended.

# Impact on Workforce Partners

Consumers in closed categories will be provided with a letter identifying their category and outlining the referrals resources available statewide as well as locally.

# Impact on Employers

OVR business services staff will continue to provide business services activities such as:

- Outreach and consultation on disability work-related topics.
- Job Development (for consumers who have an Individualized Plan for Employment in place)
- Job Placement (for consumers who have an Individualized Plan for Employment in place)



# Resources for Partners

- Job Accommodation Network - <https://askjan.org/>
  - JAN is the leading source of free, expert, and confidential guidance on workplace accommodations. Ask Jan!
- Kentucky Protection & Advocacy/Client Assistance Program - <https://kypa.net/get-help/> or call 1-800-372-2988.
  - The Client Assistance Program (CAP) at Kentucky Protection and Advocacy is available to assist you in your relationship with OVR. CAP can help you to understand services available from the Office, advise you on other benefits available from state and federal agencies, help you to pursue appropriate remedies to ensure the protection of your rights, and help to resolve any dissatisfaction that you may have with the Office regarding the provision or denial of services.

# Pre-Employment Transition Services

The following slides are dedicated to the impact of Order of Selection on Pre-ETS

# Pre-ETS Overview

Pre-ETS are intended to provide students with a generalized early start to job exploration. The 5 required Pre-ETS include:

1. Self-Advocacy Instruction
2. Counseling on Postsecondary Options
3. Job Exploration Counseling
4. Work Based Learning Experiences
5. Workplace Readiness Training

# Pre-ETS Criteria

- For students 14 – 21
- Enrolled in secondary or post-secondary education
- Have an Individualized Education Plan (IEP), 504 Plan, or have a documented disability.

# Student Impact on Pre-ETS

- Potentially eligible students will continue to receive Pre-ETS. Potentially eligible students are not impacted by the closing of priority categories. Potentially Eligible Students who apply for Vocational Rehabilitation Services are not exempt from the Order of Selection requirements.
- If the student received Pre-ETS prior to being placed in a closed priority category, they may continue to receive Pre-ETS if they meet the definition of a student with a disability. If the student did not receive Pre-ETS prior to being placed in a closed priority category, they may not receive Pre-ETS while in a closed category.

# **In School Student IPE Meeting Impact**

OVR staff will continue to attend IEP meetings for potentially eligible students and students with OVR cases for the period of time that certain priority categories are closed.

# Reasons for 2025 Order of Selection Implementation

The following provides an overview for seeking Order of Selection implementation in 2025.

# Summary of 2025 Order of Selection

The previous slides have provided information on the regulations and processes associated with the implementation of an Order of Selection.

The following slides are specific to the 2025 request to implement an Order of Selection for the Kentucky Office of Vocational Rehabilitation. These reasons include increases in costs of supplies and goods, and an increase in referrals and services.



# Cost increases –

- Costs of goods and services have increased exponentially.
- Increase in number of referrals and consumers being served.
- Services fee increases were implemented
- Raises were provided due to high turnover associated with qualified vocational rehabilitation personnel and this did increase personnel costs.
- State agencies were flat funded in the VR grants.

# Increased Services

- Applications increased from 6,297 in 2021 to 12,310 in 2024. **This was a 95% increase.**
- Eligibilities increased from 5,606 in 2021 to 11,335 in 2024. **This is a 102% increase.**
- Employment Outcomes increased from 2,756 in 2021 to 4,915 in 2024. **This is a 78% increase.**
- Expenditures increased from 2021 23,296,462 to 40,178,804 in 2024. **This is a 72% increase.**

# 2024 Priority Category

## Associated Costs & Numbers Served

Priority Category	Number Served	Associated Costs
Category 1	10,549	\$28,898,721
Category 2	3,897	\$10,533,482
Category 3	262	\$705,346
Category 4	5	\$11,286

# Duplicative Language

An additional issue was encountered due to duplicative language in the agency priority categories within the approved state plan. The agency is working to address these and will hold additional public hearings as required to obtain comments on the proposed category revisions and updates to state regulations.

- The agency must treat all approved individuals in Priority Category 1 and 2 the same since both categories are designated as “Most Significant”.
- Treating Priority Category 1 and 2 the same will cease with approval of new categories from RSA. This information will be covered in upcoming public hearings to address this issue.

# Brief Overview of Services

- The current closure request includes all four (4) Priority Categories.
- All individuals with an implemented plan continue to receive services.
- All individuals without a plan or determined eligible after Order of Selection implementation will be placed on a waiting list by assigned priority category and eligibility date.
- Vocational Rehabilitation Counselors will continue to determine eligibility, conduct eligibility assessments as needed and assign priority categories to those eligible.
- As funds are available the agency will serve Most Significant Individuals with Disabilities first (Categories 1 and 2) based on date of eligibility.
- A category is opened based on funding available to serve all consumers in that category.

# When Will Order of Selection be Implemented?

OVR is implementing Order of Selection with all Priority Categories closed on May 14, 2025. The implementation date has been shared broadly with staff, consumers, and partners.

Updates on Order of Selection can be found on the OVR website under the Order of Selection tab or by searching Order of Selection on the site. <https://kcc.ky.gov/Vocational-Rehabilitation>

# Future Public Hearings on Priority Category Changes and State Regs

- Plans are in place for a public hearing during June 2025 to review the proposed priority category changes and updates to state regulations.
- Announcements will be provided in advance through the OVR website, social media, listservs, and reg watch.

# Resources

- OVR Website for Order of Selection Information  
<https://kcc.ky.gov/Vocational-Rehabilitation>
- 34 CFR 361.36 Order of Selection  
<https://www.law.cornell.edu/cfr/text/34/361.36>