Navigating Order of Selection:
A Resource for VR Agencies

VRTAC-QM

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What Is Order of Selection?

The Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), requires the State Vocational Rehabilitation (VR) Services program to provide the full range of services to all individuals with disabilities who apply for and are determined eligible for the VR program. When a State VR program determines it does not have sufficient resources and cannot provide services to all eligible individuals in the state, the agency must include in its State Plan the order to be followed in determining eligible individuals to receive services, including a justification for the order of selection (OOS), and ensuring the process established prioritizes individuals with most significant disabilities to be selected first for the provision of services. The foundation of an OOS is understanding the regulations that govern it, primarily **34 C.F.R. § 361.36** *Ability to serve all eligible individuals; order of selection for services*.

Determining the Need for Establishing and Implementing an OOS

Before the start of each fiscal year, the VR agency must determine whether or not it has the ability to provide the full range of VR services to all eligible individuals, or to establish and implement an OOS. The agency must base the determination on the program's fiscal and personnel resources as well as the projected needs of individuals with significant disabilities in the state and reevaluate this determination when circumstances change during the fiscal year, such as a decrease in fiscal or personnel resources that may result in a determination to either establish and implement an OOS if the agency is not already under an OOS, or to close one or more disability priority categories (**34 C.F.R. § 361.36(c)**).

See the **Key Steps** outlined below in determining and reevaluating the need.

Step 1: Before Implementing an OOS

Forecasting: Assess resources and analyze agency circumstances.

Before implementing an Order of Selection (OOS), the agency must thoroughly assess its resources and overall circumstances to determine its capacity to serve all eligible individuals. This forecasting process ensures that financial, personnel, and operational factors are carefully evaluated, allowing the agency to make informed decisions that uphold program integrity, maximize available resources, and minimize service disruptions.

- **Determine the fiscal forecast's timeframe** (e.g., FFY, PY, SFY) and align this with the agency's budget cycle and reporting requirements.

- **Determine how many years will be included** in the data analysis to identify trends and averages (e.g., 3-5 years).

- **Identify inputs**:
  - Historical averages (case costs, service usage, application rates); and
  - Expected changes (inflation, budget increases/decreases, policy changes).

Key questions to address

- What is the agency's cost to serve all individuals with current Individualized Plans for Employment (IPE)?
- What is the agency's cost to provide assessment services for all expected applicants?
- Can the agency serve all individuals expected to be eligible in the next fiscal year?
- Will the agency meet program requirements, including providing Pre-ETS to all students needing such services and the 15% minimum reservation and expenditure requirement?

Assess fiscal resources.

VR agencies must **incorporate the following data elements** into their assessment materials submitted to RSA:

- **Current active IPEs**
  - Assess current cases and annual average costs per case.
  - Gather cost data for all cases and calculate the mean cost per case, taking into account outliers or unique scenarios.
  - Adjust for inflation or anticipated policy changes.

- **Projected changes in service costs and budgetary resources**
  - Analyze expected changes in vendor rates, wage inflation, and policy-driven increases in service utilization.

- **Costs for assessment services**
  - Analyze patterns in the proportion of new applicants requiring assessments and typical costs.
  - Isolate expenditures on assessment services.

- **Projected new applicants**
  - Review prior application trends, noting any seasonal patterns or external factors that may be affecting demand.
  - Adjust for anticipated changes in referral sources or outreach efforts, including potentially eligible students with disabilities who may apply for VR services.

- **Projected new IPEs**
  - Use historical trends to estimate the number of new IPEs that may be developed.
  - Factor in policy shifts, outreach activities, or program changes influencing enrollment.

- **Projected potentially eligible students with disabilities and average cost per student**

- **Projected annual costs for administering the program**
  - Staff salaries and benefits;
  - Outreach activities;
  - Operational costs; and
  - Required studies (e.g., Comprehensive Statewide Needs Assessment).

- **Assumptions**
  - Clearly document all assumptions, such as average cost increases or predicted caseload growth.

- **Projections**
  - Multiply projected IPEs, assessments, and service costs by their respective average costs.
  - Sum total costs and compare with projected budgetary resources.
  - Review projections against anticipated funding levels. If costs exceed resources—
    - Identify areas to reduce costs (e.g., prioritize essential services, renegotiate vendor contracts); and
    - Consider alternative funding strategies or additional resources.

- **Monitor and update forecast regularly**
  - Fiscal forecasts are iterative; update projections periodically with actual data (e.g., monthly or quarterly).
  - Adjust assumptions based on new trends or unexpected changes in demand or funding.

Assess staff resources.

- **Analyze staffing levels, referral rates, and caseload sizes**, including services to potentially eligible students with disabilities.

- **Analyze resource allocation** to determine whether current resources can be reallocated to areas of greatest need or used differently (virtual or remote) to address the state's needs.

Analyze and implement cost containment measures.

Optimize resources by implementing these strategies early—**don't wait to take action**. Possible strategies to review and implement include the following:

- **Comparable Services and Benefits:** Ensure the agency is leveraging other programs or services where applicable to reduce costs.

- **Review Financial Needs Testing:** Consider implementing or reviewing existing financial needs testing to assess consumer financial participation in certain services, consistent with **34 C.F.R. § 361.54**.

- **Collaboration with Workforce Development Programs:** Leverage WIOA partners and other workforce resources.

- **Balancing In-House vs. Purchased Services:** Evaluate the cost-effectiveness of providing services in-house vs. outsourcing.

- **Efficient Use of Existing Information for Assessments:** Avoid duplicative assessments by using existing records consistent with **34 C.F.R. § 361.42(d)**.

- **Consumer Services Authorization Attrition Rates:** Regularly review and update authorizations to ensure obligated funds align with actual expenditures. Consider shorter authorization timeframes, monthly vs. quarterly. Overauthorization complicates budgeting.

- **Policies and Practices:** Regularly review policies, procedures, and practices to eliminate unnecessary costs.

- **Examining operational and administrative expenses**:

  o Streamline processes: Use electronic case files, digital signatures, AI, and chatbots to reduce workload.

  o Reduce office costs: Reevaluate office space needs and administrative contracts, including copiers, leases, and phone services.

  o Control expenses: Adjust supply budgets, limit out-of-state travel, and monitor costs associated with staff departures (including computer leases and cell phones).

  o Renegotiate contracts: Review all vendor agreements to identify potential savings.

- **Staff Time-Tracking**: Are staff correctly tracking and recording their time to the appropriate activities, such as Pre-ETS vs. other VR work?

- **Staff-related cost containment measures:** Eliminate temporary hires, limit overtime, evaluate vacant positions, freeze staffing, and slow hiring to reduce expenses.

  Note: Before implementing cost containment measures, establish a baseline of projected spending. This enables you to track savings and assess the impact of each implemented strategy on your budget.

Consult with the State Rehabilitation Council.

Prior to implementing an OSS, the agency must consult with the State Rehabilitation Council under **34 C.F.R. § 361.36(f)** to review and advise the agency on the need to establish an OOS, the criteria for the priority categories, and the administration of the OOS, as well as provide an opportunity for public comment under **34 C.F.R. § 361.20(a)(2)(v)**. If circumstances require a mid-year change to the State Plan based on the evaluative data gathered, ensure sufficient time for public participation and comment about the proposed changes. VR agencies are strongly encouraged to seek assistance and support from their RSA liaison and state team when they anticipate the need to establish and implement an OOS.

Develop OOS policies and procedures.

Ensure the OOS policy includes the following elements:

Basis for Order of Selection

An order of selection must be based on a refinement of the three criteria in the definition of "individual with a significant disability" in section 7(21)(A) of the Rehabilitation Act and **34 C.F.R. § 361.5(c)(30)**. The three criteria to be refined by the State VR agency include the following:

1. The number and degree of functional limitations;
2. The amount of time needed for VR services; and
3. The number of VR services needed.

Definitions: Establish a definition of "most significant disability" based on the refinement of "significant disability" in **34 C.F.R. § 361.5(c)(30)**.

- "Individual with a significant disability" means an individual with a disability:

    o Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

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

        ▪ 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, musculoskeletal 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 another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Order of Selection and Supplemental Security Income (SSI)/Social Security Disability Insurance (SSDI) Recipients and Beneficiaries:

- Individuals receiving SSI and/or SSDI due to disability or blindness are considered at least "individuals with significant disabilities."

- They should be evaluated to determine whether they meet the criteria for "individuals with the most significant disabilities."

- No statutory authority allows for a special priority category for SSI/SSDI recipients or for selecting them before others with significant disabilities.

OOS cannot be based on the following:

- Residency duration;

- Type of disability;

- Personal characteristics (age, gender, race, color, or national origin);

- Referral source;

- Expected employment outcome;

- Need for specific services or anticipated costs; or

- Income level of the individual or their family.

Outline the criteria you have established for determining each disability priority category.

Outline the ranking of individuals within a priority category described earlier in this document.

Outline whether your agency will allow exceptions for individuals who require specific services or equipment to maintain employment.

Information & Referral Services

- Specify how individuals on a waiting list will be informed about and referred to other resources.

Implementation and Management

- Describe how the waitlist will be managed and how priority categories will be opened.

    Note: A priority category remains closed until all individuals on the waitlist and newly eligible applicants in that category can be served. A category is only considered open when services can be provided to all individuals within it, not just a portion. If multiple categories are closed, individuals on waitlists cannot be served until each category is fully opened in the designated order.

- For real-time data analysis, include tracking mechanisms for costs, staff time, and caseload sizes.

A Typical OOS consists of the following three priority categories:

1. Priority Category I: Eligible individuals with the most significant disabilities
2. Priority Category II: Eligible individuals with significant disabilities
3. Priority Category III: All other eligible individuals with disabilities

Ranking Individuals Within a Priority Category

- A State VR agency can establish a policy for ranking individuals within a priority category.

- The policy should be based on the use of an equitable and reasonable factor, such as the individual's date of application. This provides a method for selecting individuals from a waiting list for a priority category when the agency has enough resources to serve some, but not all, individuals in that priority category.

Review tracking system capacity.

Ensure the agency's case management system can support the administration of the OOS, including the tracking and reporting of necessary information. The following elements should be considered:

- **Priority Category Assignment:** Accurately classify individuals into the appropriate priority categories.
- **Waitlist Management:** Track individuals placed on the waitlist and manage releases based on agency capacity.
- **Real-Time Tracking:** Monitor referral, application, eligibility, assignment to a closed category, provision of information & referral services, and service trends to inform decision-making.
- **Reporting and Compliance:** Generate reports for RSA, leadership, and stakeholders on OOS status, fiscal impact, and service trends.

- **Automated Notifications:** Alert staff and consumers about waitlist status, eligibility determinations, and service availability.
- **Pre-ETS Tracking:** Ensure continued access to Pre-ETS for potentially eligible and eligible students in accordance with **34 C.F.R. § 361.36(e)(3)(i)**.

Step 2: Establishing an OOS

Finalize the OOS policy.

Write a State Plan section/amendment to the State Plan.

The following must be included in the VR agency's VR services portion of the Unified or Combined State Plan when the determination is made to establish and implement an OOS:

- **Show the order to be followed** in selecting eligible individuals to be provided VR services.

- **Provide a detailed justification** for why the agency is implementing an OOS. Include all factors influencing this decision, such as—
    - Significant financial changes, including increased costs of services, reallotment of funds, carryover considerations, and changes to match requirements or cost-sharing arrangements.
    - Results of the financial needs test or other fiscal analyses indicating the necessity of an OOS to manage resources effectively.
    - Programmatic reasons, such as increased numbers of applicants, eligibility determinations, assessments, and IPE development, which have led to a demand for services that exceeds available resources.
    - Staffing resources that contribute toward the need for an OOS (e.g., turnover, vacancies, hiring delays, freezes, etc.).

- **Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order.**
    Assure that—
    - In accordance with criteria established by the state for the OOS, individuals with the most significant disabilities will be selected first for the provision of VR services; and
    - Individuals who do not meet the OOS criteria will have access to services provided through the information & referral system established under **34 C.F.R. § 361.37**; and
    - State whether the State VR agency will elect to serve, at its discretion, eligible individuals (whether or not the individuals are receiving VR services under the OOS) who require specific services or equipment to maintain employment; and
    - Project a timeline for when the agency will begin implementing the OOS, including key milestones such as public notification, stakeholder engagement, and the effective date of implementation.

Consult with your SRC and hold public meetings.

The State Plan and any amendments must include an opportunity for the public to weigh in.

Obtain approval from RSA.

- **Consult your RSA State Liaison** and team for approval to reopen the portal and revise the State Plan.

Train staff on OOS policies and procedures.

Ensuring a well-trained and informed staff is essential for consistently and accurately implementing the OOS and assigning disability priority categories across all offices.

- **Develop and train staff on the OOS** and disability priority categories to ensure individuals are accurately assigned to the priority categories.

- **Ensure clear internal guidance** to mitigate variation in OOS implementation across offices.

- **Establish periodic case reviews**.

- When implementing an order, **consider counselor performance expectations**. Some standards may be counterintuitive. For instance, if staff are expected to develop a specific number of IPEs each month, this goal may need to be adjusted to account for eligible individuals assigned to a closed category.

- **Ensure staff continue services for individuals with active IPEs**, and Pre-ETS for students who began receiving them before eligibility determination.

- **Ensure staff are applying the OOS consistently** across the state.

Step 3: Implementing an OOS

Follow administrative requirements.

Under **34 C.F.R. § 361.36(e)**, the **Designated State Unit (DSU) must do the following**:

- **Implement OOS** statewide.
- **Notify eligible individuals** of the priority categories in a state's OOS, their assignment to a particular category, and their right to appeal.
- **Continue services for those already receiving them**, irrespective of the severity of their individual disability, as follows:
  - **Pre-ETS for students with disabilities receiving them** before VR eligibility determination **34 C.F.R. § 361.36(e)(3)(i)**.
    - i. DSUs may use the funds reserved under section 110(d) of the Rehabilitation Act and **34 C.F.R. § 361.65(a)(3)** for the continuation of these services
    - ii. This change does not permit the DSU to provide any other transition or VR services for students with disabilities assigned to closed priority categories.

      iii. If Pre-ETS are provided through a TPCA, note the requirements in **34 C.F.R. § 361.28(a)(4)**, as all requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection, will apply to all services provided under the cooperative arrangement. See **RSA TAC-24-05**.

    ○ **All services listed in an IPE** if the individual started receiving them before OOS implementation.

- **Ensure funding arrangements comply** with the VR services portion of the Unified or Combined State Plan. If inconsistencies arise, the VR agency must renegotiate funding to align with OOS.

Develop a communication plan.

A well-planned communication strategy ensures that all internal and external stakeholders understand the purpose, impact, and next steps for implementing the OOS. Effective messaging should be tailored to each audience, including the following:

- **Governor's Office:** Policy and funding implications

- **Staff**: Implementation procedures and frontline communication

- **Consumers**: Service expectations and available supports

- **Stakeholders** (e.g., CAP, SRC, CRPs, WIOA partners): Collaboration and shared responsibilities

Key Elements of the Communication Strategy

- **Clearly explain the decision-making process.**
  - Provide a transparent rationale for implementing OOS.
  - Detail how priority categories are determined and how they impact service delivery.

- **Illustrate cost increases and resource constraints.**
  - Use data on consumer trends and service costs to explain financial challenges.
  - Show why the agency cannot provide the full range of services to all applicants.

- **Address service quality and caseload management.**
  - Explain how high caseloads affect service quality and why action is needed.
  - Clarify that OOS is a temporary measure to stabilize service delivery and ensure sustainability.

- **Explain the impact on students with disabilities.**
  - Communicate how OOS and any disability priority category closures may affect access to Pre-ETS, including those Pre-ETS services that may be provided under a TPCA.
  - Reinforce the agency's commitment to serving students with disabilities within regulatory requirements.

- **Promote transparency in cost-containment efforts.**
  - Actively share progress on cost-saving measures and system improvements.
  - Highlight both short-term and long-term solutions to reassure stakeholders that the waitlist is not permanent.

- **Clarify eligibility and priority categories.**
  - Address misconceptions about who qualifies as having the Most Significant Disability (MSD).
  - Ensure fair and equitable access to services through clear eligibility guidelines.

Step 4: After Implementing an OOS

Monitor and adjust.

To ensure effective implementation of the OOS, VR agencies must plan with the end goal in mind: a sustainable system that balances service delivery with fiscal responsibility. A strategy based on data-driven decision-making and transparency will lead to long-term sustainability in service delivery.

- **Strengthening Capacity Over Time**
  - Implement strategies to enhance service delivery and improve fiscal sustainability.

- **Strategic Waitlist Management**
  - Use referral and application dates, assessment and case service costs, caseload sizes and attrition, and staff retention rates to determine when to release individuals from the waitlist.
  - Factors to consider when determining fund availability for waitlist release.
    - **Track spending**: Determine how often you will review- weekly or monthly expenses.
    - **Project annual costs**: Divide total spending by months passed, then multiply by 12.
    - **Implement cost-saving measures**: Apply strategies and track their impact.
    - **Contingency funds**: Assure funds are available for unexpected costs.
    - **Assess cash flow**: Compare available funds to the cost of serving each individual.
    - **Review regularly**: Check finances weekly or monthly to adjust projections.
    - **Release individuals**: Determine the number that can be served based on financial improvements.
  - Release individuals in manageable batches (e.g., monthly or quarterly) to allow staff to prepare.
  - Strive to release more individuals from the waitlist than are newly determined eligible whenever possible, steadily reducing and hopefully eliminating waitlist numbers over time.

- **Performance Tracking and Fiscal Oversight**
  - Monitor the fiscal impact of OOS decisions.
  - Assess service outcomes for individuals in each priority category.

- **Continuous Review and Adjustments**
  - o Periodically evaluate the need for OOS based on financial and service capacity.
  - o Adjust OOS implementation in response to fiscal shifts, personnel changes, and evolving service demands.

Follow due process requirements.

- Section 20 of the Act mandates all programs under the Act, including VR, to inform applicants and service recipients of their right to due process.

- All students and youth with disabilities receiving VR services, including Pre-ETS, must be informed of the availability and purpose of the Client Assistance Program (CAP).

Remember—you do not have to do this alone!

Reach out to your RSA State Liaison and your technical assistance providers.