# **FINAL STATEMENT OF REASONS**

# UPDATE TO INITIAL STATEMENT OF REASONS

Information provided in the Initial Statement of Reasons has changed. There are further changes made to Title 9 of the California Code of Regulations (“CCRs”) which contains all of the state regulations for the Department of Rehabilitation (“DOR”). CCR 7026.5, regarding a student with a disability, now mirrors state statutory language used in the California Education Code section 56026, but DOR also added policy language mirroring the federal definition of student with a disability in 34 C.F.R. 361.5(c)(51). DOR has changed the wording of the supported employment definition in CCR 7028 to exactly match the applicable federal language in 34 C.F.R. 361.5(c)(54). In the definition of trial work experiences, CCR 7029.1, DOR had the subject of the definition in its singular form. DOR changed it to the plural form in the title as well as throughout the definition, also adding any language necessary to make the definition the same as the federal definition found in 34 C.F.R. 361.42(e). In CCR 7060, on eligibility, DOR added the word “sex” to accompany “gender” since “sex” is the term used in 34 C.F.R. 361.42(c)(2)(ii)(A). In CCR 7129, DOR added the wording “benefits planning” to be consistent with federal law and regulations in 29 U.S.C. 722(b)(2) and 34 C.F.R. 361.45(c)(3). Changes to CCR 7129(a)(2)(D) will also be made for clarity because of an inadvertent clerical error. DOR added “informed choice” to the primary employment factors in CCR 7130(a)(2) which is consistent with the federal regulation.

In 7029.1, a typographical error from the first modified text was fixed during the second 15-day public comment period and finally, language from 34 C.F.R. 361.48 was added to CCR 7151 to make it more similar to the federal regulations.

The Initial Statement of Reasons identifies all studies, reports, and documents DOR has relied upon in the proposed action. No additional data or any technical, theoretical, or empirical study, report, or similar document has been relied upon.

During the public comment period from April 22, 2022, through and concluding on June 30, 2022, DOR received oral and written comments on the proposed action which is an update to DOR’s regulations in the CCR to add all federal changes made by the adoption of the “Workforce Innovation and Opportunity Act” (WIOA). After making relevant changes to the documents based upon public comments, DOR noticed modifications to the proposed text two more times. Once on August 19, 2022, which held open a public comment period until September 7, 2022, as well as on October 17, 2022, which closed the public comment period on November 4, 2022. All comments received during those time are summarized and responded to below.

**LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD OF APRIL 22, 2022, THROUGH JUNE 30, 2022.**

**Commenter, DRC:** Ivan Guillen, of Disability Rights California made oral comments during the public hearing having to do with several issues. In addition, Sarah Isaacs, also of Disability Rights California, submitted 17 written comments. Because some of the comments mirror each other, all DRC comments have been merged in this document and hereafter, are referred to as, “DRC”.

**DRC, Comment 1:** As to CCR 7004.6(c), regarding the Clear and Convincing Evidence regulation, the commenter suggested that DOR include this underlined language in subsection (c), “The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, and the Department must provide with any necessary supports (including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during trial work experiences), in real life settings.” (DRC Letter, pg. 3)

**Response to Comment 1:** No action taken. This additional language is part of the definition of trial work experiences in 34 C.F.R. 361.42(e) but is not the definition of clear and convincing evidence. As previously stated, the definition of clear and convincing evidence is consistent with the note in 34 C.F.R. 361.42, including the “high degree of certainty” before concluding an individual cannot benefit from vocational rehabilitation services in terms of an employment outcome.” Further, accommodations are addressed in subdivision (c), as well as CCR 7029.1(b)(4), which provides that the trial work experience “[m]ust include appropriate supports provided by DOR, including assistive technology devices and services and personal assistance services to accommodate the rehabilitation needs of the individual during trial work experience.” This specific rulemaking is an adoption of federal law and regulation and that by state and federal law, DOR is mandated to follow. This rulemaking is only codifying those federal changes.

**DRC, Comment 2:** As to CCR 7013.6, regarding Extended Employment, the commenter suggested that DOR delete the entire regulation because of the passage in California of Senate Bill 639 (SB 639) (Stats. 2021, ch. 339, § 2) which phases out subminimum wage pay by 2025. (DRC Letter, pg. 3)

**Response to Comment 2:** Noaction taken. This comment is outside the scope of our rulemaking package. This rulemaking is only codifying federal changes from the WIOA. DOR acknowledges SB 639 will be a multiyear phaseout plan.

**DRC, Comment 3:** As to CCR 7021.6, regarding the definition of Pre-Employment Transition Service (Pre-ETS), it is suggested that DOR add language found in the Federal Register (that DOR cites to in the ISOR) and add a citation to CCR 7149 describing how DOR will fund Pre-ETS. (DRC Letter, pg. 7)

**Response to Comment 3:** No action taken.  As the Commenter conceded, the definition for Pre-ETS mirrors exactly the federal definition of the term as found in 34 C.F.R. 361.48. It will not provide clarity in terms of the definition of Pre-ETS to explain in detail how an individual is to receive accommodations or to cite to CCR 7149. CCR 7149 does not define Pre-ETS. The DOR notes that accommodations for students will be addressed in a separate rulemaking package on student services.

**DRC, Comment 4:** As to CCR 7026.5, defining Student with a Disability, the comment indicates that putting the state age requirements from the California Education Code was difficult to follow. (DRC Letter, pg. 7)

**Response to Comment 4:** Action taken. While this rulemaking includes the definitions associated with student services, regulations for student services are in a future rulemaking package. For clarity and to be compliant with state law, DOR mirrors state statutory language used in the California Education Code section 56026 as well as adds DOR policy expanding subsection (3) of the federal regulations. The Commenter’s suggested language unintentionally changes the meaning of the actual statute.

**DRC, Comment 5:** As to CCR 7028, regarding Supported Employment, the commenter stated the proposed definition is too limited in relation to the federal definition and suggested that DOR change the underlined and strikethrough language in the regulation as follows, “(a) Competitive integrated employment including customized employment, in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with including ongoing support services for individuals with the most significant disabilities;--- ~~which they require; and~~

(1) For whom competitive integrated employment has not ~~traditionally~~ historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(2) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition from support provided by the Department as described in CCR 7014.1 of these regulations to perform this work. (DRC Letter, pg. 8)

**Response to Comment 5:** Action taken. DOR agrees that the originally proposed text in CCR 7028 did not mirror the federal regulation and has changed the wording of CCR 7028 to match current language in 34 C.F.R. 361.5(c)(54).

**DRC, Comment 6:** As to CCR 7029.1, regarding Trial Work Experience, the commenter suggested that DOR change language in the regulation that makes the term “trial work experience”, plural to “experiences”, as well as other additions under 34 C.F.R. 361.42(e). The commenter states that these changes will more closely mirror the language used in the federal regulations. (DRC Letter, pg. 9; Public Hearing Transcript, pg. 6)

**Response to Comment 6:** Action taken. In an effort to reflect federal law and regulation changes from the WIOA as closely as possible, DOR will change “trial work experience” to “trial work experiences” along with adding the wording used in the federal regulation, 34 C.F.R. 361.42.

**DRC, Comment 7:** As to CCR 7029.6 regarding Informed Choice, the commenter recommended that DOR list exemptions from comparable services and benefits, as well as develop policies to inform clients that DOR cannot impose any arbitrary limits on the provision of services or limitations it pays vendors. (DRC Letter, pg. 15; Public Hearing Transcript, pg. 7)

**Response to Comment 7:** No action taken. After consideration of this comment and comparing federal regulations to the proposed amendment, DOR maintains that the proposed changes cover all of the WIOA changes made within the federal regulations and that the exemptions are covered elsewhere in the regulations. While DOR is not accepting the suggested changes, DOR notes that comparable services and benefits, including exemptions thereto, are addressed in CCR sections 7006, 7029.6(c)(2), and 7916.

**DRC, Comment 8:** As to CCR 7029.7, Rights of Individuals with Disabilities, the commenter wants federal language regarding a client's right to receive a timely notice whenever a service is reduced, terminated, or suspended included in the proposed regulations, and likewise, a link up to the consumer’s right to appeal when such things happen. (DRC Letter, pg. 18; Public Hearing Transcript, pg. 8)

**Response to Comment 8:** No action taken. The commenter’s suggested changes are not prompted by WIOA and references a regulation that is not in this rulemaking package. While DOR does not accept this comment, consistent with its core value of continuous improvement, this comment will be shared with DOR staff responsible for future policy and program evaluation.

**DRC, Comment 9:** As to CCR7052, Order of Selection, the recommendation is to include language that DOR should assess whether they can “meet all program requirements” as part of the definition. (DRC Letter, pg. 19)

**Response to Comment 9:** No action taken. This recommendation does not focus on changes made by the WIOA. This specific rulemaking does not expand on policy or program issues but is only an adoption of federal law and regulation amended by the WIOA which DOR is mandated to adopt.

**DRC, Comment 10:** As to CCR 7060, on Eligibility, the commenter wants the addition of the word “sex” to accompany “gender” since “sex” is the term used in 34 C.F.R. 361.42(c)(2)(ii)(A). (DRC Letter, pg. 20)

**Response to Comment 10:** Action taken. DOR will be adding the word “sex” to accompany “gender”, as it was added in 2016 adopting the federal WIOA changes.

**DRC, Comment 11:** As to CCR 7098, Ineligibility Determination, the commenter wants DOR to include language that requires DOR to conduct a review of a determination of client ineligibility for services within 12 months after they have been deemed ineligible under 34 C.F.R. 361.43(e). (DRC Letter, pg. 21; Public Hearing Transcript, pg. 9.)

**Response to Comment 11:** No action taken.The language found in 34 C.F.R. 361.43(e) was not part of the WIOA amendment. Further, it already says in existing CCR 7181.1 that DOR will review a determination of ineligibility for services within 12 months after they have been deemed ineligible, and mirrors the federal language referenced.

**DRC, Comment 12:** As to CCR 7128, general requirements of the Individual Plan for Employment (“IPE”), commenter would like the additions of “in a timely manner, as is”, which is language used in 34 C.F.R. 361.45(a)(1). (DRC Letter, pg. 22; Public Hearing Transcript, pg. 10.)

**Response to Comment 12:** No action taken. The wording, “in a timely manner” was not added to the federal regulation as a result of WIOA. The wording, “as soon as possible, no later than 90 days” is already found in CCR 7128 and was implemented by WIOA. This rulemaking is only codifying those federal changes resulting from WIOA.

**DRC, Comment 13:** As to CCR 7129, on developing an IPE, the comment is that since DOR added (a)(2)(C) then (a)(2)(D) must say, “Resources other than those specified in (A), (B) or (C)…”. Also, that federal regulations use the words, “assistance with benefits planning” and so should DOR in CCR 7129(c). (DRC Letter, pg. 23.)

**Response to Comment 13:** Action taken. Both 29 U.S.C. 722(b)(2) and 34 C.F.R. 361.45(c)(3) include the wording, “assistance with benefits planning” and this change was made as a result of the WIOA, therefore DOR will change 7129(c) to the same wording. Further, the changes to CCR 7129(a)(2)(D) will also be made for consistency and clarity.

**DRC, Comment 14:** As to CCR 7130, mandatory procedures for developing the IPE, the commenter wants the language “and informed choice.” added. (DRC Letter, pg. 24.)

**Response to Comment 14:** Action taken. While “informed choice” is already found in CCR 7130(a)(2), DOR agrees to add it to the primary employment factors supported by the federal regulations.

**DRC, Comment 15:** As to drafting a new regulation governing provisions for individuals with disabilities, Commenter wants the federal mandate that the state has the duty to make policy on the nature and scope of vocational rehabilitation services into the state regulations. (DRC Letter, pg. 25.)

**Response to Comment 15:** No action taken. The federal regulation that Commenter cites to as the driving force for a new regulation here is 34 C.F.R. 361.50. This is not an update after the WIOA. DOR notes that its policies are consistent with 34 C.F.R. 361.50 and do not establish absolute time limits on the provision of specific services or on the provision of services to an individual.

**DRC, Comment 16:** As to CCR 7143, Disclosures without Written Consent, Commenter seeks the addition of language from 34 C.F.R. 361.38 to specify when and how disclosures would take place. (DRC Letter, pg. 26.)

**Response to Comment 16:** No action taken.The language found in 34 C.F.R. 361.38 was not part of the WIOA amendment.This rulemaking is only codifying those federal changes.

**DRC, Comment 17:** As to CCR 7151, Counseling, Guidance and Referral Services, The Commenter suggests adding “the goal of preparing for, securing, retaining, advancing in or regaining an employment outcome” to section 7151. (DRC Letter, pg. 27.)

**Response to Comment 17:** No action taken. The DOR has determined that this language is not needed in CCR 7151, as it is specifically included in CCR 7149(b), which describes the broader goal of vocational rehabilitation services as preparing for, securing, retaining, advancing in, or regaining an employment outcome. Further, subsections (b)(3) and (4) identify counseling, guidance, and referral as types of services to achieve these goals.

**DRC, Comment 18:** As to CCR 7181.1, Commenter states that this regulation should be repealed because California’s SB 639 (Stats. 2021, ch. 339, § 2) has ended all subminimum wage work in the state. (DRC Letter, pg. 28.)

**Response to Comment 18:** No action taken. This comment is outside the scope of our rulemaking package.This rulemaking is only codifying federal changes from the WIOA. DOR’s current regulations are not inconsistent with state law.

**This ends all written and oral comments from the DRC.**

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**Oral Comments during the Public hearing on June 30, 2022, from 10:00 a.m. to 12:00 p.m.**

**Oral Commenters 2 through 6**: There were six DOR consumers who attended the public hearing and made statements. The consumers thought that the hearing that was open to the public was an opportunity to discuss vocational rehabilitation services around the state. Many put comments on the record suggesting different ways DOR could do things with the regulations, in the field offices, or specifically by DOR vocational rehabilitation counselors.

**Response to Oral Commenters 2 through 6:** No action taken. The Administrative Procedure Act requires DOR to respond to comments on the rulemaking procedures or proposed action in the Final Statement of Reasons. (Gov. Code, § 11346.9.) None of the comments made by Commenters 2 through 6 related directly to the process or text of the rulemaking package for which the public hearing was held. Consequently, in accordance with the Administrative Procedure Act, DOR is not responding to these comments in the Final Statement of Reasons for this rulemaking. The DOR did however, direct the consumers to email DOR customer service with their comments, as well as gave them the email addresses so they could send their comments to the proper offices. Finally, DOR notified all attending the Zoom hearing that there is an administrative review and appeal procedure they could use if dissatisfied with the vocational rehabilitation services they receive from DOR, if relevant.

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**Written Comments received during the open public comment period from April 22, 2022, through 5:00 p.m. on June 30, 2022.**

**Commenters 7 and 8:** These emailed comments were also from current consumers or clients about vocational rehabilitation services and did not address the rulemaking package at all.

**Response to Commenters 7 and 8:** No action taken. The Administrative Procedure Act requires DOR to respond to comments on the rulemaking procedures or proposed action in the Final Statement of Reasons. (Gov. Code, section 11346.9.) None of the comments made by the Commenters 7 and 8 relate directly to the rulemaking package. Consequently, in accordance with the Administrative Procedure Act, DOR is not responding to these comments in the Final Statement of Reasons for this rulemaking. The DOR did however, direct the consumers’ emails to DOR customer service with their comments so that DOR Customer Service Unit could assist with any issues they may have.

**COMMENT(S) RECEIVED DURING THE 15 DAY PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC**

There was one comment made during the 15-day public comment period on the modified text. It was from Sarah Isaacs on behalf of DRC, and it pertained to a typographical error that mistakenly left out two words from the modified text in CCR 7029.1. The changes suggested by the DRC have been made to correct the error so that CCR 7029 mirrors the language of 34 C.F.R. 361.42(e)(1) as DOR intended.

An additional modification was made by DOR during this public comment period which added language, “with the goal of preparing for, securing, retaining, advancing in or regaining an employment outcome,”

from the federal regulation, 34 C.F.R. 361.48, in to CCR 7151 that had not yet been added.

**COMMENT(S) RECEIVED DURING THE SECOND 15 DAY PERIOD THE SECOND MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC**

There were no additional comments made at this time.

**ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

No alternatives were proposed to DOR that would lessen any adverse economic impact on small business nor were rejected by DOR.

**ALTERNATIVES DETERMINATION**

The DOR has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, nor would it be as effective and less burdensome to affected private persons than the proposed action of adopting the federal law and regulations as required, and equally effective in implementing the statutory policy or other provision of law.

The regulations and amendments adopted by DOR are the only regulatory provisions identified by DOR that accomplish the goals of updating the Title 9 CCRs with wording established by federal law and regulations after the WIOA amendment to the Rehabilitation Act of 1973. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to DOR’s attention.