**California Code of Regulations**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation**

**Final Regulation Text**

**7001.5. Assessment to Determine Eligibility and Vocational Rehabilitation Needs.**

“Assessment to Determine Eligibility and Vocational Rehabilitation Needs” means, as appropriate in each case:

(a) A review of existing data---

(1) To determine if an individual is eligible for vocational rehabilitation services; and

(2) To assign priority for an Order of Selection implemented pursuant to Section 7053 of these regulations.

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment.

(c) To the extent additional data are necessary to make a determination of the employment outcome and the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment---

(1) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the IPE of the eligible individual;

(2) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements---

(A) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an Order of Selection implemented pursuant to Section 7053 of these regulations; and

(B) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(3) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(4) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

(5) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings.

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment.

(e) An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5, 361.42, and 361.45; and Section 19011, Welfare and Institutions Code.

**7002.5. Assistive Technology Service.**

“Assistive Technology Service” means any service that directly assists an

individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using ~~other~~ necessary therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(g) Expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 723, and 3002; 34 CFR Sections 361.5 and 361.48; and Sections 19011 and 19150, Welfare and Institutions Code.

**7004.6. Clear and Convincing Evidence.**

(a) With respect to the determination of eligibility, “Clear and Convincing Evidence” means a high degree of certainty before it can be concluded that, due to the severity of the individual’s disability, the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in a~~n~~ competitive integrated employment setting.

(b) Clear and convincing evidence may include a description of assessments, including situational assessments and supported employment assessments from service providers who have concluded that they would be unable to meet the individual’s needs due to the severity of the individual’s disability.

(c) The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR 361.42; and Sections 19011 and 19103(b), Welfare and Institutions Code.

**7005. Client.**

“Client” or “Consumer” means an eligible individual receiving services under the Act, as defined in 34 CFR Section 370.6(b).

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 370.6.

### 7006. Comparable Services and Benefits.

(a) “Comparable Services and Benefits” means services and benefits, including accommodations or auxiliary aids and services, that are:

(1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s Individualized Plan for Employment (IPE); and

(3) Commensurate to the services that the individual would otherwise receive from the Department.

(b) For the purposes of this definition---

(1) Comparable services and benefits do not include awards and scholarships based on merit.

(2) A Plan for Achieving Self-Support (PASS) issued to an individual with a disability by the Social Security Administration (SSA) does not constitute a comparable service and benefit.

(3) A “ticket” issued to an individual with a disability under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (42 USC 1320b-19) is considered a comparable service and benefit under the vocational rehabilitation program to the extent that a ticket holder is receiving services from another entity that is serving as that individual’s employment network.

(4) If the individual initially chooses the Department as its employment network under TWWIIA or otherwise transfers his or her ticket to the Department, the ticket would not be considered a comparable service and benefit.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721; 34 CFR Section 361.5 and 361.53; and Sections 19011 and 19150, Welfare and Institutions Code.

### 7006.1 Community Rehabilitation Program

(a) “Community Rehabilitation Program” is a program that enables individuals with disabilities to maximize their employment opportunities, including career advancement, by providing directly or facilitating the provision of one or more of the following vocational rehabilitation services to them:

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(2) Testing, fitting or training in the use of prosthetic and orthotic devices.

(3) Recreational therapy.

(4) Physical and occupational therapy.

(5) Speech, language, and hearing therapy.

(6) Psychiatric, psychological, and social services, including positive behavior management.

(7) Assessment for determining eligibility and vocational rehabilitation needs.

(8) Rehabilitation Therapy.

(9) Job development, placement, and retention services.

(10) Evaluation or control of specific disabilities.

(11) Orientation and mobility services for individuals.

(12) Extended employment.

(13) Psychosocial rehabilitation services.

(14) Supported employment services and extended services.

(15) Customized employment.

(16) Services to family members if necessary, to enable the applicant or eligible individual to achieve an employment outcome.

(17) Personal assistance services.

(18) Services similar to the services described in paragraphs (1) through (17) of this definition.

(b) For the purposes of this definition, program means an agency, organization, or institution, or unit of agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR Section 361.5; Sections 19011 and 19150(b), Welfare and Institutions Code.

**7006.3. Competitive Integrated Employment.**

(a) “Competitive integrated employment” means work that—

(1) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable state or local minimum wage law for the place of employment;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) 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 or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(2) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(3) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. section 705; 34 C.F.R section 361.5; and sections 19000 and 19011, Welfare and Institutions Code.

**7006.6. Customized Employment**

(a) “Customized Employment” is competitive integrated employment for an individual with a significant disability, that is:

(1) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability.

(2) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer.

(3) Carried out through flexible strategies, such as;

(A) Job exploration by the individual, and

(B) Working with the employer to facilitate placement, including:

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs:

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location; and

(iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

Note: Authority: sections 19006 and 19016, Welfare and Institutions Code, Reference: 29 U.S.C. section 705; 34 C.F.R section 361.5.

### 7011. Employment Outcome.

“Employment Outcome” means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment as defined in Section 7006.3 of these regulations (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in section 7028 of these regulations, that is consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR 361.5~~(b)~~; and Section 19011, Welfare and Institutions Code.

### 7013.6. Extended Employment.

(a) “Extended Employment” means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (FLSA) (29 USC 214(c)) for the limited purposes of training, or otherwise preparing for competitive integrated employment where vocational services may be provided.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5~~(b)~~ and 361.37; and Section 19011, Welfare and Institutions Code.

### 7014.1. Extended Services.

(a) “Extended services” means ongoing support services and other appropriate services that are—

(1) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(3) Based on the needs of an eligible individual, as specified in an Individualized Plan for Employment (IPE);

(4) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the Department; and

(5) Provided to a youth with a most significant disability by the Department for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability, whichever occurs first. (6) The designated State unit may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5~~(b)~~; and Section 19011, Welfare and Institutions Code.

### 7017.5. Individual with a Significant Disability.

“Individual with a Significant Disability” means an individual:

(a) who the Social Security Administration has determined is eligible for Social Security benefits under Title II (42 U.S.C. Section 401 et seq.) or Title XVI (42 U.S.C. Section 1381 et seq.) of the Social Security Act, or

(b) who meets the following three criteria:

(1) has a severe physical or mental impairment that seriously limits ~~serious limitation~~ ~~in terms of an employment outcome, in at least~~ one or more functional capacities ~~capacity area~~ (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(2) whose vocational rehabilitation program can ~~is~~ be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) has one or more physical or mental disabilities resulting from acquired traumatic brain injury, amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, HIV, intellectual disability, 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, 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.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705~~(21)(A)~~; 34 CFR 361.5~~(b)(30)(31)~~; and Sections 19011 and 19151 ~~19102~~, Welfare and Institutions Code.

### 7018.4. Integrated Setting.

“Integrated Setting” ---

(a) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(b) With respect to an employment outcome, means a setting—

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5; and Section 19011, Welfare and Institutions Code.

### 7019.5. Ongoing Support Services.

(a) “Ongoing Support Services,” as used in the definition of “Supported Employment,” means services that are:

(1) Needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(2) Identified based on a determination by the Department of the individual’s need as specified in the Individualized Plan for Employment (IPE); and

(3) Furnished by the Department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual’s term of employment in a particular job placement.

(b) Ongoing support services must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(1) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(2) If under specific circumstances, especially at the request of the individual, the IPE provides for off-site monitoring, twice-monthly meetings with the individual.

(c) Ongoing support services shall consist of:

(1) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in Section 7001.5(c) of these regulations;

(2) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(3) Job development, job retention, and placement services;

(4) Social skills training;

(5) Regular observation or supervision of the individual;

(6) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(7) Facilitation of natural supports at the worksite;

(8) Any other service identified in the scope of vocational rehabilitation services for individuals described in Section 7149 of these regulations; or

(9) Any service similar to the foregoing services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR Sections 361.5 and 361.48; and Section 19011, Welfare and Institutions Code.

**7021.****6 Pre-Employment Transition Services**

(a) “Pre-employment transition services” means the required and authorized services, listed as follows:

(1) The Department must provide all of the following pre-employment transition services:

(A) Job exploration counseling.

(B) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible.

(C) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education.

(D) Workplace readiness training to develop social skills and independent living.

(E) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(2) With the funds that are available and remaining after the provision of the required activities described in paragraph (a)(1) of this section, the Department may provide authorized activities to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(A) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(B) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(C) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(D) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(E) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(F) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(G) Developing model transition demonstration projects;

(H) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, the Department, the Department of Developmental Services, private businesses, or other participants to achieve the goals of this section; and

(I) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. section 733; 34 CFR sections 361.5 and 361.48; sections 19011 and 19150, Welfare and Institutions Code.

### 7026.5. Student with a Disability; Students with Disabilities.

### (a) The term “student with a disability” means an individual who:

### (1) is not younger than 16, and

(2) is not older than 21 years of age; unless the student is participating in a special education program under the California Education Code section 56026, then to ensure there is no gap in pre-employment transition services, the Department will extend such services to any student who turns 22 prior to the end of their special education program as follows:

(A) If a student will become 22 years old in January to June, their pre-employment transition services may extend for the remainder of the current fiscal year, including any extended school year program (e.g. summer school).

(B) If a student will become 22 years old in July, August, or September, their pre-employment transition services may not extend through the beginning of a new fiscal year. However, if a student is in a year-round school program and is completing their individualized education program in a term that extends into the new fiscal year, then the student may complete that term.

(C) If a student will become 22 years old in October, November, or December, their pre-employment transition services may extend through the end of the calendar year, unless the student would otherwise complete their individualized education program at the end of the current fiscal year.

(3) is enrolled in a secondary or postsecondary education program which includes non-traditional or alternative secondary education programs, such as home schooling, continuation schooling, education programs offered through the juvenile justice system, and other recognized educational programs.

(4) is one or more of the following:

(A) eligible for and receiving special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. section 1414.)

(B) an individual with a disability, as defined in section 7017 of these regulations.

(b) “Students with disabilities” means more than one student with a disability.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 20 U.S.C. section 1412, 29 U.S.C. sections 705 and 733; 34 C.F.R. sections 361.5 and section 19011, Welfare and Institutions Code; section 56026, Education Code.

### 7028. Supported Employment.

“Supported Employment” means:

(a) Competitive integrated employment including customized 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 individual~~s~~ including ongoing support services for individuals with the most significant disabilities;

(1) For whom competitive integrated employment has not 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 as described in Section 7014.1 of these regulations to perform this work.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5; and Section 19011, Welfare and Institutions Code.

**7028.1.** **Supported Employment Services**.

“Supported Employment Services” means ongoing support services including customized employment, and other appropriate services made available singly or in combination, based upon the determination of the needs of the eligible individual, specified in an Individualized Plan for Employment (IPE), and organized in such a way so as to support and maintain an individual or a youth with a most significant disability in supported employment in order to perform this work---

(a) Provided by the Department and ~~For a period of time~~ not to exceed ~~18~~ 24 months, unless ~~under special circumstances~~ the eligible individual and the Rehabilitation Counselor jointly agree to extend the time beyond 24 months to support and maintain the individual in supported employment necessary to achieve the employment outcome identified in the Individualized Plan for Employment (IPE); and

(b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5 and 361.48; and Section 19011, Welfare and Institutions Code.

### 7028.6. Transition Services.

### (a) “Transition Services” means a coordinated set of activities for a student or youth with a disability that are all of the following:

(1) Designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, competitive integrated employment, continuing and adult education, adult services, independent living, or community participation;

(2) Coordinated set of activities must be based upon the individual student’s or youth’s needs, taking into account their preferences and interests.

(3) Including instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(4) Promoting or facilitating the achievement of the employment outcome identified in the student’s or youth’s Individualized Plan for Employment (IPE);

(5) Including outreach to and engagement with the parents, or as appropriate, the representative of the youth or student with a disability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705and 723; 34 CFR Sections 361.5 and 361.48; and Sections 19011, 19013 and 19150, Welfare and Institutions Code.

### 7029.1. Trial Work Experiences for Individuals with Significant Disabilities.

(a) Prior to any determination that~~,~~ an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because ~~due~~ ~~to~~ of the severity of ~~the~~ that individual’s disability or that the individual is ineligible for vocational rehabilitation services, the Department must conduct an exploration of the individual’s abilities, capabilities, and capacity to perform in realistic work situations.

(b) The Department must develop a written plan to assess periodically the individual’s abilities, capabilities, and capacity to perform in competitive integrated employment work settings to the maximum extent possible through the use of trial work experiences, consistent with the informed choice and rehabilitation needs of the individual;

(1) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(2) Trial work experiences must be of sufficient variety and over a sufficient period of time for the Department to determine that:

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in a competitive integrated employment setting; or

(B) There is clear and convincing evidence, as defined in Section 7004.6 of these regulations, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in a competitive integrated employment setting due to the severity of the individual’s disability.

(3) The Department must include appropriate 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.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 722; and 723; 34 CFR Sections 361.42, 361.47 and 361.48 and Sections 19011 and 19150, Welfare and Institutions Code.

### 7029.2. Vocational Rehabilitation Services

### “Vocational Rehabilitation Services” are the services described in section 7149 of these regulations.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. section 723, 34 CFR section 361.48; and sections 19011 and 19150, Welfare and Institutions Code.

### 7029.4 Youth with a Disability; Youth with Disabilities

### (a) “Youth with a Disability” means an individual with a disability who is not younger than 14 years of age and older than 24 years of age.

(b) “Youth with Disabilities” means more than one youth with a disability.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR section 361.5; and sections 19011 and 19150, Welfare and Institutions Code.

# Chapter 1.5. Informed Choice

### 7029.6. Informed Choice.

(a) Applicants, and eligible individuals or, as appropriate, their representatives shall be provided information and support services to assist them in exercising informed choice throughout the rehabilitation process consistent with the requirements of this section.

(b) To assist applicants and eligible individuals to exercise informed choice throughout the vocational rehabilitation process, the Department shall:

(1) Inform each applicant and eligible individual including students with disabilities who are making the transition from programs of an educational agency to the Department’s programs, through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Afford eligible individuals meaningful choices among methods used to procure vocational rehabilitation services, consistent with applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration; and

(4) Assist eligible individuals or, as appropriate, the individuals’ representatives to acquire information that enables them to exercise informed choice in the development of their Individualized Plans for Employment (IPEs) with respect to the selection of the ---

(A) Employment outcome, as defined in and consistent with Section 7011 of these regulations;

(B) Specific vocational rehabilitation services needed to achieve the employment outcome, as defined in and consistent with Section 7149 of these regulations;

(C) Entity that will provide the services;

(D) Employment setting and the settings in which the services will be provided; and

(E) Methods available for procuring the services, consistent with State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

(c) The availability and scope of informed choice shall be consistent with the Department’s obligations under the Act and federal regulations and with the Department’s responsibilities for the administration of the vocational rehabilitation program. Statutory and regulatory requirements that affect the exercise of informed choice include all of the following:

(1) Section 101(a)(6)(C) of the Act and 34 CFR 361.51, which require that any facility used in connection with the delivery of vocational rehabilitation services is accessible to individuals with disabilities.

(2) Section 101(a)(8)(A) of the Act and 34 CFR 361.53, which require that prior to providing any vocational rehabilitation service to an eligible individual, or to members of the individual’s family, the Department shall determine whether comparable services and benefits as defined in Section 7006 of these regulations are available under any other program in accordance with and under conditions specified in Chapter 5, Article 3 of these regulations.

(3) Section 101(a)(9)(B) of the Act and 34 CFR 361.45, which require that vocational rehabilitation services be provided in accordance with the provisions of the Individualized Plan for Employment (IPE).

(4) 34 CFR 361.50, which authorizes the Department to develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in Section 7149 of these regulations and the criteria under which each service is provided.

(5) 34 CFR 361.54, which permits the Department to consider the financial need of eligible individuals, or individuals who are receiving services through trial work experience under Section 7062(h), for purposes of determining the extent of their participation in the costs of vocational rehabilitation services under conditions specified in Chapter 5, Article 1 of these regulations.

(6) 2 CFR section 200.317 of the Office of Management and Budget (OMB) Guidance, which governs the procurement of property and services under a grant.

(7) 34 CFR section 361.13, which specifies activities that are the responsibility of the Department in the administration of the vocational rehabilitation program. These activities include, but are not limited to:

(A) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services; and

(B) The allocation and expenditure of vocational rehabilitation funds.

(8) 34 CFR 361.12, which requires, in part, that the Department ensure financial accountability in administering the vocational rehabilitation program.

(9) 34 CFR 361.48 which requires, in part, that vocational rehabilitation services must be appropriate to the vocational rehabilitation needs of the individual.

(10) 34 CFR 361.45, which requires, in part, that the employment outcome chosen by the eligible individual must be consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, ~~and~~ interests~~.~~,and informed choice.

(d) When assisting an applicant and eligible individual to exercise informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the Department must provide the individual or the individual’s representative, or assist the individual or the individual’s representative to acquire, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual’s employment outcome. This information must include, at a minimum, information relating to the ---

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services, to the extent that this information is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that this information is available.

(e) In providing, or assisting the individual or the individual’s representative to acquire, the information specified in (d) of this section, the Department may use, but is not limited to, the following methods or sources of information.

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(5) Opportunities for individuals to visit or experience various work and service provider settings.

Note: Authority: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 701, 721and 722; 2 CFR Section 200.317, 34 CFR Sections 361.50 and 361.52; and Sections 19000 and 19005, 19011, and 19012, Welfare and Institutions Code.

# Chapter 2. Referral and Application Processes; Order Of Selection; Eligibility; Record of Services; Individualized Plan for Employment (IPE)

**Article 1. Referral and Application Processes**

### 7035. Processing Referrals of Individuals to the Department.

(a) The purpose of this section is to provide standards for the prompt and equitable handling of referrals of individuals, made to the Department for vocational rehabilitation services, including referrals of individuals made through one-stop service delivery systems established under the Workforce Innovation and Opportunity Act and by other state units.

(b) The Department shall provide all individuals, referred to the Department with information about:

(1) The application process and requirements under Section 7041 of these regulations, including the requirement that the individual provide the Department with information necessary to initiate an assessment to determine eligibility and priority for services as a condition of application;

(2) The basis for a determination of eligibility and priority category in accordance with Section 7062 of these regulations; and

(3) The Order of Selection process as specified in Chapter 2, Article 2 of these regulations.

(c) The information specified in (b) of this section shall be provided in writing to the potential applicant and/or his or her authorized representative no later than 15 working days after the initial contact from the potential applicant and/or his or her authorized representative or from a third party referring the potential applicant.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.41; and Section 19011, Welfare and Institutions Code.

### 7037. Processing Referrals of Individuals to Other Agencies.

(a) The Department shall provide individuals with disabilities, including eligible individuals who are not in a priority category being served under an Order of Selection implemented pursuant to Chapter 2, Article 2 of these regulations, with accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) to assist those individuals to prepare for, secure, retain, advance in, or regain employment. The Department shall provide this information using appropriate modes of communication.

(b) The Department shall refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system. In making these referrals, the Department must---

(1) 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 with a disability; and

(2) Provide the individual who is being referred with all of the following:

(A) A notice of referral by the Department to the agency carrying out the program;

(B) Information identifying a specific point of contact within the agency to which the individual is being referred;

(C) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, advance in, or regain employment; and

(D) Information about the Client Assistance Program and how to contact that program.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721and 723; 34 CFR Sections 361.37 and 361.48 and Section 19011, Welfare and Institutions Code.

### 7038. Processing Referrals of Individuals to Local Extended Employment Providers.

The Department must refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment, as defined in Section 7013.6 of these regulations. Before making this referral, the Department must---

(a) Consistent with Section 7041(d)(6) of these regulations, explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome, as defined in Section 7011 of these regulations.

(b) Consistent with informed choice as described in Section 7029.6 of these regulations, provide the individual with information concerning the availability of employment options and of vocational rehabilitation services, to assist the individual to achieve the appropriate employment outcome;

(c) Inform the individual that services under the vocational rehabilitation program may be provided to eligible individuals in an extended employment setting if necessary for the purposes of training or otherwise preparing for employment in an integrated setting;

(d) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as described in section 7011, he or she may seek services from the Department at a later date if, at that time, he or she chooses to pursue an employment outcome; and

(e) Refer the individual, as appropriate, to the Social Security Administration (SSA) in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the SSA.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5 and 361.37; and Section 19011, Welfare and Institutions Code.

**Article 2. Order** **of Selection for Vocational Rehabilitation Services**

**7052****.** **Determination of Need for Order of Selection for Vocational Rehabilitation Services.**

(a) Prior to the beginning of each fiscal year, the Department shall:

(1) project the cost of determining eligibility for all applicants for vocational rehabilitation services in the next fiscal year; and

(2) project the cost of serving, in the next fiscal year, the projected number of individuals with Individualized Plans for Employment (IPEs) in place at the end of the current fiscal year; and

(3) project the cost of serving, in the next fiscal year, individuals whose IPEs will be put in place in that year.

(b) The Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services identified in subsection (a), are not adequate to meet all the projected costs under subsection (a).

(c) After the start of a fiscal year, the Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services identified in subsection (a), for the remainder of the fiscal year, are not adequate to meet all projected costs under subsection (a) for the remainder of the year.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721; 34 CFR 361.29; and Sections 19005, 19011 and 19102, Welfare and Institutions Code.

**7053.** **Order of Selection for Vocational Rehabilitation Services Process.**

(a) If the number of individuals eligible to receive vocational rehabilitation services must be limited, an Order of Selection for Vocational Rehabilitation Services shall be implemented and services shall be provided to individuals in priority categories in the following order:

(1) Priority Category One: Eligible individuals with a most significant disability, as defined in Section 7017.2, beginning with the earliest application date.

(2) Priority Category Two: Eligible individuals with a significant disability, as defined in Section 7017.5, beginning with the earliest application date.

(3) Priority Category Three: All other eligible individuals who do not meet the criteria for Priority Category One or Priority Category Two, beginning with the earliest application date.

(b) When eligible individuals who are in Priority Category Two can be served, all eligible individuals who are in Priority Category One shall be served regardless of the date of application.

(c) When eligible individuals who are in Priority Category Three can be served, all eligible individuals who are in Priority Category Two shall be served regardless of the date of application.

(d) Individuals who are not included in the priority category(ies) being served shall be placed on a waiting list pursuant to Section 7055.

(e) The criteria established by the Department for the Order of Selection, mandates individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services. Additionally, the Department, in its discretion, may elect to serve eligible individuals who require specific services or equipment to maintain employment, whether or not the individuals are receiving vocational rehabilitation services under the Order of Selection. The Department shall specify any such election in its Order of Selection Declaration.

(f) Upon implementation of the Order of Selection for Vocational Rehabilitation Services:

(1) Individuals whose IPE was written and signed prior to implementation shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

(2) Individuals who were determined eligible prior to implementation, but for whom the IPEs have not been written and signed, shall be assigned to a priority category.

(3) Students with disabilities who were receiving pre-employment transition services in accordance with section 7149(a) and have not yet been determined eligible for vocational rehabilitation services prior to implementation shall continue to receive such services regardless of the Order of Selection.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721; 34 CFR Sections 361.5 and 361.36; and Sections 19011 and 19102, Welfare and Institutions Code.

**7053.5. Modifying Order of Selection for Vocational Rehabilitation Services.**

(a) When the Director of the Department has declared the Department in Order of Selection for Vocational Rehabilitation Services, at least a quarterly review will be done to determine whether the projected resources available to serve individuals in priority category/ies currently being served are adequate to meet all projected costs for such individuals for the remainder of the fiscal year.

(b) If the review indicates that the projected resources are inadequate to serve individuals in priority categories currently being served, the priority categories being served will be reduced accordingly. Individuals in a priority category no longer being served, whose Individualized Plan for Employment (IPE) was written and signed prior to implementation of the reduction shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

(c) If the review indicates that the projected resources are adequate to serve only individuals in priority categories currently being served, no change will be made in the priority categories being served.

(d) If the review indicates that the projected resources are adequate to serve individuals in additional priority categories, those categories will be served.

(e) The Director shall make a declaration of any change in priority categories.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. 721; 34 CFR 361.36; and Sections 19005 and 19102, Welfare and Institutions Code.

**Article 3. Determination of Eligibility and Priority for Services;**

**Ineligibility Determination**

**7060****. General Provisions - Eligibility.**

(a) An eligibility determination must be made within 60 days of an individual submitting an application by meeting the requirements of 7041(b)(1)-(3), unless----

(1) Exceptional and unforeseen circumstances beyond the control of the Department preclude making an eligibility determination within 60 days and the Department and the individual agree to a specific extension of time; or

(2) Information required to make an eligibility determination must be obtained through trial work experience in accordance with Section 7062(h) of these regulations and cannot be obtained within 60 days.

(b) If the applicant does not agree to specific extension of time as specified in (a)(1) of this section, an eligibility determination shall be made based on the information available.

(1) If the applicant does not agree with the eligibility determination, the applicant and/or his or her authorized representative shall be informed of the right to appeal the determination made by the Department through administrative review, mediation, and fair hearing as provided in Chapter 12 of these regulations.

(c) Prohibited factors:

(1) The Department shall not impose, as part of determining eligibility, a duration of residence requirement that excludes from services any applicant who is present in the State.

(A) The Department may not require the applicant to demonstrate a presence in the State through the production of any documentation that under State or local law, or practical circumstances, results in a de facto duration of residence requirement.

(2) In making a determination of eligibility, the Department shall assure that---

(A) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(B) The eligibility requirements are applied without regard to the:

1. Age, gender, sex, race, color, or national origin of the applicant;

2. Type of expected employment outcome;

3. Source of referral for vocational rehabilitation services; and

4. Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant’s family.

5. Applicants’ employment history or current employment status.

6. Applicants’ educational status or current educational credential.

 Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721and 722; 34 CFR Sections 361.41 and 361.42; Sections 19009, 19011, and 19103, Welfare and Institutions Code.

**7062. Assessment for Determining Eligibility.**

In order to determine whether an individual is eligible for vocational rehabilitation services, and the individual’s priority category in accordance with Section 7062.3 under an Order of Selection implemented pursuant to Section 7053 of these regulations, the Department must conduct an assessment in the most integrated setting possible, consistent with the individual’s needs and informed choice, and in accordance with the following provisions.

(a) The Department’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements:

(1) A determination by qualified personnel, who need not be Department employees, that the applicant has a physical or mental impairment;

(2) A determination by qualified personnel, who need not be Department employees, that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

(3) A determination by a Rehabilitation Counselor employed by the Department that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) A presumption, in accordance with (c) of this section, that the applicant can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in an integrated setting.

(b) Personnel not employed by the Department who make the determination(s) specified in (a)(1) or (2) must:

(1) Possess the knowledge and expertise needed to make the determination(s); and

(2) Base the determination(s) on current information that is relevant and sufficient to support such determination(s).

(c) The Department must presume that an applicant who meets the eligibility requirements specified in (a)(1) and (2) of this section can benefit in terms of an employment outcome.

(d) When determining the eligibility of Social Security recipients and beneficiaries the following conditions shall apply:

(1) Any applicant who has been determined by the Social Security Administration (SSA) to be eligible for Social Security benefits under Title II (Social Security Disability Insurance (SSDI)) or Title XVI (Supplemental Security Income (SSI)) of the Social Security Act (42 USC Section 401 and 1381) because the individual is blind or disabled is---

(A) Presumed eligible for vocational rehabilitation services under (a) and (c) of this section; and

(B) Considered an individual with a significant disability as defined in Section 7017.5 of these regulations.

(2) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and therefore is presumed eligible for vocational rehabilitation services under (d)(1)(A) of this section), but is unable to provide appropriate evidence, such as an award letter to support that assertion, the Department must verify the applicant’s eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. The Department shall obtain verification within a reasonable period of time that enables the Department to determine the applicant’s eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with Section 7041(b) of these regulations.

(e) Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(f) Nothing in this section, including the provisions of (d)(1), shall be construed to create an entitlement to any vocational rehabilitation service.

(g) Except as provided in (h) and (i) of this section, the Department--

(1) Must base its determination of each of the basic eligibility requirements in (a) of this section on---

(A) A review and assessment of existing data, including:

1. Rehabilitation Counselor observations including, but not limited to, observation of an obvious impairment, as in the case of loss of a limb.

2. Medical records.

3. Education records.

4. Information provided by the individual or the individual’s family, particularly information used by education officials.

5. Determinations made by officials of other agencies.

(B) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible.

(2) Must base its presumption under (d)(1) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in (a) of this section on determinations made by the Social Security Administration.

(h) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual’s disability, or that the individual is ineligible for vocational rehabilitation services, the Department must conduct trial work experience as defined in Section 7029.1 of these regulations to determine whether or not there is clear and convincing evidence as defined in Section 7004.6 to support such a determination.

(i) The Rehabilitation Counselor shall document the basis on which the individual’s eligibility has been established in a notice of eligibility. This notice, signed and dated by the Rehabilitation Counselor, shall be provided to the individual and a copy placed in the individual’s record of services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR Sections 361.5, 361.42, and 361.47; and Sections 19011 and 19100, Welfare and Institutions Code.

**7098.** **Ineligibility Determination.**

If the Department determines that an applicant is ineligible for vocational rehabilitation services from the Department or determines that an eligible individual is no longer eligible for services, the Department must---

(a) Make the ineligibility determination only after providing an opportunity for full consultation with the individual or, as appropriate, the individual’s representative.

(b) Notify the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination including—

(1) The reasons for the ineligibility determination;

(2) The requirements of this section; and

(3) A description of the means by which the individual may obtain review of the ineligibility determination, including the individual’s right to an administrative review, mediation, and fair hearing pursuant to Chapter 12 of these regulations.

(c) Provide the individual with a description of services available from the Client Assistance Program and information on how to contact that program.

(d) Refer the individual to other programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act, known as America’s Job Centers of California, that can address the individual’s training or employment-related needs; or

(1) To federal, state, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in section 7011 of these regulations.

(e) Place a copy of the written notice of ineligibility described in (b) of this section in the individual’s record of services and close the record of services in accordance with the provisions of Chapter 4 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR Sections 361.43 and 361.47; and Section 19011, Welfare and Institutions Code.

**Article 5. The Individualized Plan for Employment (IPE)**

**7128.** **General Requirements.**

(a) An Individualized Plan for Employment (IPE) shall be developed and implemented consistent with the requirements of this Article. Services shall be provided in accordance with the provisions of the IPE.

(b) Once an individual has been determined eligible to receive services from the Department and is in a priority category being served under an Order of Selection implemented pursuant to Section 7053 of these regulations, the IPE must be developed in collaboration with the eligible individual as soon as possible, but no later than ~~within~~ 90 days from the date of the eligibility determination. The following exceptions apply:

(1) If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the qualified vocational rehabilitation counselor must be entered into the record of services for that individual.

(2) Only one extension may be agreed to by the rehabilitation counselor and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(c) The Department must conduct an assessment for determining vocational rehabilitation needs, if appropriate, prior to development of the IPE, for each eligible individual who is in a priority category being served under Order of Selection. This assessment is conducted consistent with Section 7001.5 of these regulations to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the IPE**.**

(d) The IPE must be designed to achieve a specific employment outcome in competitive integrated employment, as defined in Sections 7006.3 and 7011 of these regulations, that is selected by the individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 721, 722, and 723; 34 CFR Sections 361.5, 361.45, 361.46 and 361.48; and Sections 19011, 19102, and 19150(a)(1), Welfare and Institutions Code.

**7129.** **Options for Developing an Individualized Plan for Employment (IPE)**

The Department must provide the following information to each eligible individual or, as appropriate, the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual’s representative:

(a) Information on the available options for developing the Individualized Plan for Employment (IPE), including the option that an eligible individual or, as appropriate, the individual’s representative may develop all or part of the IPE---

(1) Without assistance from the Department or other entity; or

(2) With assistance from---

(A) A Rehabilitation Counselor employed by the Department;

(B) A qualified vocational rehabilitation counselor who is not employed by the Department;

(C) A disability advocacy organization; or

(D) Resources other than those specified in (A), (B) or (C) of this section who are qualified in the field in which they are providing assistance.

(b) The Department shall also provide additional information to assist the eligible individual or, as appropriate, the individual’s representative in developing the IPE, including---

(1) Information describing the full range of components that must be included in an IPE.

(2) As appropriate to each eligible individual ---

(A) An explanation of Department guidelines and criteria for determining an eligible individual’s financial commitments under an IPE;

(B) Information on the availability of assistance in completing Department forms required as part of the IPE; and

(C) Additional information that the eligible individual requests or the Department determines to be necessary to the development of the IPE.

(3) A description of the rights and remedies available to the individual, including, if appropriate, recourse to administrative review, mediation, and fair hearing processes as described in Chapter 12 of these regulations.

(4) A description of the availability of the Client Assistance Program and information on how to contact that program.

(c) For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the Department shall provide general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits counseling.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR 361.45; and Section 19011, Welfare and Institutions Code.

**7130.** **Mandatory Procedures for Development of the Individualized Plan for Employment (IPE); Review; Amendment.**

(a) The following mandatory procedures shall be used to develop an Individualized Plan for Employment (IPE).

(1) The IPE shall be a written document prepared on the form DR 215 (Rev. 03/04) provided by the Department.

(2) The IPE shall be developed and implemented in a manner that gives eligible individual the opportunity to exercise informed choice consistent with 7029.6 of these regulations, in selecting---

(A) The employment outcome, including the employment setting;

(B) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(C) The entity or entities that will provide the vocational rehabilitation services; and

(D) The methods available for procuring the services, consistent with applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

(3) The IPE must be---

(A) Agreed to and signed by the eligible individual or, as appropriate, the individual’s representative; and

(B) Approved, signed, and dated by a Rehabilitation Counselor employed by the Department determining that the employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the employment setting and settings in which services will be provided, the entities that will provide the services, and the methods available for procuring the services are appropriate and necessary in consideration of:

(i.) The individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(ii.) The scope of applicable laws and regulations specified in Section 7029.6(c) of these regulations.

(4) A copy of the IPE and a copy of any amendments to the IPE shall be provided to the eligible individual or, as appropriate, to the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual’s representative.

(5) The IPE shall be reviewed at least annually in accordance with Section 7133 of these regulations by a qualified vocational rehabilitation counselor and the individual or, as appropriate, the individual’s representative to assess the eligible individual’s progress in achieving the identified employment outcome.

(6) The IPE may be amended, as necessary, by the individual or, as appropriate, the individual’s representative, in collaboration with a representative of the Department or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual’s representative and by a Rehabilitation Counselor employed by the Department. Before approving and signing any amendment to the IPE, the Rehabilitation Counselor shall review the amendment consistent with applicable requirements established in (a)(3)(B)1. of this section.

(8) The IPE shall be amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721and 722; 34 CFR Sections 361.45, 361.50; and Sections 19005, 19011, 19012, and 19013.5, Welfare and Institutions Code.

**7131.2.** **Individualized Plan for Employment (IPE) for a Student with a Disability.**

(a) An Individualized Plan for Employment (IPE) for a student with a disability defined in section 7026.5 who is receiving special education services or 504 accommodations under the Americans with Disability Act, and who has been determined eligible for vocational rehabilitation services and is in a priority category being served under an Order of Selection implemented pursuant to Section 7053 of these regulations, shall be completed and approved as early as possible during the transition planning process but, at the latest, by the time the student leaves the school setting.

(b) The IPE shall be developed and implemented in accordance with Sections 7128 through7131 of these regulations and also must---

(1) Consider the student’s Individualized Education Program (IEP) or 504 Plan and be coordinated with the goals, objectives, and services identified in the IEP,and 504 services if any;

(2) Be consistent with the plans, policies, procedures, and terms of the interagency agreement between the California Departments of Education and Rehabilitation.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 722, 723 and 794; 34 CFR Sections361.5, 361.22, 361.45, 361.46, and 361.48; and Sections 19011, 19013, and 19150, Welfare and Institutions Code.

**7136.4.** **Self-employment; Informed Choice.**

To assure informed choice, prior to development of an Individualized Plan for Employment (IPE) for an eligible individual who is interested in entering, advancing in, or retaining work~~ing~~ in a self-employment setting, the Rehabilitation Counselor (RC) shall discuss with the individual:

(a) The criteria and process for assessing whether the proposed self-employment setting is appropriate, as specified in Sections 7136.6, 7136.7, and 7136.8 of these regulations;

(b) The scope of vocational rehabilitation services that may be provided by the Department to assist an eligible individual to achieve employment in a self-employment setting, as specified in Section 7137 of these regulations; and

(c) The eligible individual’s responsibility to identify and obtain resources that may be necessary to establish and operate the proposed small business, as specified in Sections 7136.6 and 7136.9 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721, 722, and 723; 34 CFR Sections 361.5, 361.45, 361.48, 361.50, and 361.52; and Section 19011, Welfare and Institutions Code.

**7136.6.** **Self-employment; Assessing the Self-employment Setting.**

(a) The Department shall support an eligible individual’s choice to work in a self-employment setting only when it determines that the proposed self-employment setting is appropriate.

(b) A proposed self-employment setting is appropriate when:

(1) Working in the proposed self-employment setting is consistent with the individual’s personal attributes, including the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) The proposed small business in which the individual will be self-employed is reasonably likely to produce sufficient income, within a reasonable period after the individual begins operating the business, not to exceed 12 months, to:

(A) Pay the necessary ongoing operating expenses of the small business, as specified in Section 7136.8 of these regulations; and

(B) 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 or on similar tasks and who have similar training, experience, and skills; and

(3) The individual is able to obtain all resources necessary to establish and operate the proposed small business, including any resources necessary to fund the ongoing operating expenses of the business and to support the individual’s basic living expenses during the period until the small business produces the income specified in subsection (b)(2) of this section.

(c) To determine whether a proposed self-employment setting is appropriate, the Department shall consider any existing information; the summary of the proposed small business specified in Section 7136.5(c) of these regulations; and, to the extent additional information is necessary, information obtained through assessments (including, if appropriate, development and review of a Small Business Plan) consistent with Sections 7001.5, 7128, 7130.5, 7136.7, 7136.8, 7136.9, and 7149(b) of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 722, and 723; 34 CFR Sections 361.1, 361.5, 361.13, 361.45, 361.46, 361.48, and 361.50; and Sections 19011 and 19150, Welfare and Institutions Code.

**7137****. Self-employment; Scope of Services Provided for a Self-employment Setting.**

(a) The services provided by the Department to assist the eligible individual to achieve employment in an appropriate self-employment setting include assessment, technical assistance, and training to assist the individual in preparing for entering, advancing in, or retaining work in a self-employment setting, and certain initial one-time costs to establish the proposed small business.

(b) The one-time, initial costs of establishing the small business are limited to such costs that are consistent with Section 7149 of these regulations, are appropriate and necessary to assist the individual to achieve employment in a self-employment setting, and are consistent with the usual and customary initial costs typically required for establishing similar small businesses, including:

(1) Payment of occupational license fees, pursuant to Section 7149(p);

(2) Purchase or lease of tools or other equipment, in quantities consistent with the initial cost of establishing similar small businesses, pursuant to Section 7149(p);

(3) Purchase of initial stock and supplies necessary for a period not to exceed six months, pursuant to Section 7149(p); and

(4) Payment of initial deposits required for rental agreements or utility service, consistent with Section 7149(g).

(c) The Department shall consider and utilize the most cost-effective means appropriate to provide the initial costs, including use of leased rather than purchased equipment, for a lease period not to exceed six months, and acquiring initial stock on a consignment basis.

(d) Initial costs, for purposes of a self-employment setting, do not include the following costs:

(1) Costs associated with expansion of a small business;

(2) Lease or purchase of real property;

(3) Construction or remodeling of real property;

(4) Payment of taxes or tax liens;

(5) Payment of patent fees or for product development;

(6) Refinancing or repayment of debt;

(7) Reimbursement or payment of any losses incurred in connection with the small business;

(8) Purchase of an existing business or of a business franchise;

(9) Purchase or lease of a vehicle for use in operating a small business;

(10) Employee wages and benefits; and

(11) Funding for ongoing operating expenses, as specified in Section 7136.8(g) of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, and 723; 34 CFR Sections 361.1, 361, 361.48, and 361.50; and Section 19011, Welfare and Institutions Code.

**Article 6. Confidentiality**

**7140.** **General Provisions.**

(a) The purpose and intent of these regulations are:

(1) To protect the right to privacy of each individual. The right to privacy is a fundamental right which is protected by the California Constitution.

(2) To secure to such individuals the right to gain access to information pertaining to them which is maintained by the Department unless there is a clear and overriding public interest in withholding such information.

(3) To secure to such individuals the right to correct any misinformation that is being maintained about them by the Department.

(b) All information collected by the Department is the property of the Department provided such ownership does not abridge the rights of any individual as otherwise provided by this Subchapter.

(c) All provisions of this subchapter also apply to records maintained by any individual or entity under contract with the Department as a provider of goods or services to clients of the Department.

(d) Definitions:

(1) “Access” means the availability of the case record to the individual, authorized representative, and duly appointed guardian or conservator for inspection and copying.

(2) “Case Record” means any information about an individual that is maintained or otherwise possessed by the Department, including but not limited to information regarding medical history, diagnostic studies, employment history, financial status, and education. Information on computer tape, computer cards, microfilm, or any other memory system, which is strictly derivative in nature and is otherwise maintained in the case record is not included. Both active and closed records or files are included. Information gathered during the course of an investigation conducted by or on behalf of the Department, and separately maintained or supervised by the Legal Office of the Department, when such information is compiled in reasonable anticipation of a civil or criminal action or an administrative adjudication, is not included.

(3) “Disclose” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic, or any other means to any person or entity.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 1798.30, Civil Code. Reference: Sections 1798 et seq., Civil Code and 34 CFR Section 361.38.

**7141****. Disclosure to the Individual.**

(a) Except as limited by (c), all information in the case record shall, upon request and proper identification, be disclosed to the individual.

(b) The Counselor shall translate or arrange for translation of documents in the case record when requested, in a language that is understood by the individual. It is not required that the case record be translated into other languages.

(c) In cases where the individual requests access to the case record and where the Department has reason to believe that the disclosure of some portion of the case record may be harmful to the individual, the Department shall notify the individual in writing that direct disclosure is not authorized by law. The notification shall include the way in which the Department will release the information using the following options.

(1) Disclose, and if requested or needed, interpret the information directly to the authorized representative, guardian or conservator of the individual.

(2) Disclose and interpret the information to the individual through the District Medical Consultant, the District Psychologist, a panel physician, or panel psychiatrist.

(3) Upon written authorization, disclose such information to a physician, psychiatrist, or licensed or certified psychologist or other representative designated by the individual.

(d) Information in the case record shall upon request be disclosed to a duly appointed guardian or conservator of the individual provided that it can be proved, with reasonable certainty, that such person is the duly appointed guardian or,

(e) A request by an individual to examine his/her case record shall be processed as expeditiously as possible and shall not take longer than 30 days for an active case record or 60 days for a closed case record.

(f) Examination of the case record shall be permitted only in a departmental office. During the examination, the Counselor or other designated employee shall be present while the case is being reviewed. Case records may not be removed from a departmental office except by an employee of the Department for official business.

(g) The Department shall provide copies of any document or item of information which the individual is entitled to obtain at a charge not to exceed 10 cents per page. If fewer than ten pages are requested, no charge shall be made. The Department may waive the charge at its discretion.

(h) The Counselor shall record in the case record the pertinent details of each disclosure including the date disclosed.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.25-1798.34 and 1798.40, Civil Code, and 34 CFR Section 361.38.

**7141.5.** **Amending the Case Record.**

(a) When a Counselor determines that information which originated for the case record is inaccurate or incomplete, the Counselor shall correct that portion of the case record. Copies of the corrected information shall be provided to all individuals who obtained incorrect information.

(b) An individual may submit a written request to add, delete, or amend information contained in the case record. The Department, within 30 days of the receipt of such request, shall make a decision whether to amend the record.

(c) If the individual requests a change to information that was originated by a source outside the Department, they shall be informed that departmental staff cannot change information in the case record not originated by departmental staff and that the request should be made to the source of the information.

(d) If the record is to be amended, the Department shall:

(1) Amend any portion of the record which is not accurate, relevant, timely, or complete.

(2) Destroy the original material.

(3) Provide the individual with a copy of the amended material.

(e) If the record is not to be amended, the Department shall inform the individual in writing of the decision not to amend the record, the reason for such decision, and the procedures for requesting an administrative review and fair hearing of such decision.

(f) If the individual disagrees with the decision of the Department not to amend the case record, the individual may appeal that decision through the administrative review and fair hearing process.

(1) If, after administrative review, the decision of the Department not to amend the case record is upheld, the individual may submit a written statement of reasonable length setting forth the reasons for the individual's disagreement with the disputed information. This statement shall be placed in the case record. The Department shall clearly identify any portion of the record which is disputed and make available a copy of such individual's statement and a copy of a concise statement of the reasons for the decision not to amend to any person or agency to whom the disputed portion of the record is disclosed.

(2) If, after administrative review, the individual remains dissatisfied with the decision of the Department, they may request a fair hearing as provided in Section 7354 of these regulations.

(g) All details of a request to amend a case record including pertinent dates shall be recorded in the case record.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.3-1798.37, Civil Code, and 34 CFR Section 361.38.

**7142.** **Disclosure to Other Persons or Entities.**

(a) Except as specifically authorized by sections 7141, 7143, and 7143.5, no disclosure, shall be made to any person or entity about receiving services from the Department or being in the process of obtaining services from the Department, unless the informed, written consent of the individual whose records are being requested has been obtained by the Department. The prohibition against disclosures without the informed written consent of the individual applies irrespective of whether the person or party seeking disclosure already has the information, has other means of obtaining it, has obtained a subpoena, or asserts any other basis or justification for disclosure not expressly authorized by these regulations.

(b) The consent for disclosure shall be in writing and should, as appropriate, contain:

(1) The name of the individual.

(2) The name or title of the person or organization to whom the disclosure is to be made.

(3) The extent or nature of the information to be disclosed.

(4) A statement that the consent is subject to revocation at any time.

(5) The date on which the consent is signed.

(6) The signature of the individual.

(c) The consent shall be valid for a period not to exceed 30 days from the date the consent is signed unless otherwise specified in writing by the individual.

(d) The Counselor shall record pertinent details of each disclosure in the case record including the date disclosed and the person or entity to whom the information was disclosed.

(e) The Department shall not disclose an individual’s HIV test result information outside the Department without the individual’s express written authorization or as is expressly authorized under Health and Safety Code section 121025.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 1798.24 and 1798.25, Section 121025, Health and Safety Code; and Civil Code and 34 CFR Section 361.38.

**7142.5. Prohibition Against Redisclosure.**

(a) Except as specifically authorized by section 7143, the results of any HIV test performed shall not be redisclosed to any third party without the written consent of the individual for each disclosure.

(b) Except as specifically authorized by these regulations, no person or entity who receives information from the Department shall redisclose such information or any portion thereof to any other person or entity without the informed written consent of the person to whom the information pertains. Nothing in this part shall prohibit the individual from disclosing any information which is received from his or her case record.

(c) Whenever the Department makes a disclosure to any person or entity other than the individual, or their authorized representative, the disclosure shall be accompanied by a written statement as follows:

NOTICE

THIS IS PERSONAL INFORMATION FROM THE RECORDS

OF THE CALIFORNIA DEPARTMENT OF REHABILITATION.

STATE AND FEDERAL LAW AND DEPARTMENTAL

REGULATIONS PROHIBIT YOU FROM MAKING ANY

FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT

THE INFORMED WRITTEN CONSENT OF THE PERSON TO

WHOM THIS INFORMATION PERTAINS.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.38 and Sections 121022 and 121025, Health and Safety Code.

**7143. Disclosures Without Written Consent.**

(a) The individual shall be informed of the following exceptions to the regulation that no disclosure shall be made without the written consent of the individual. Any disclosure made under this part shall be strictly limited to the information necessary to carry out the purposes for which the information was released.

(1) Disclosure of information in the case record may be made between or among the staff members of the Department and its medical panel.

(2) Disclosure of information in the case record may be made in order to process payment to or from the individual or to purchase goods and services for the individual.

(3) Disclosure of information in the case record may be made to any federal or state auditor or reviewer who has authority under federal or state law to conduct an audit or review of the Department.

(4) Disclosure of information in the case record may be made to any official of the United States Department of Education, who has authority under law to review or inspect such case records.

(5) Disclosure of information in the case record may be made to the Social Security Administration, the Disability Evaluation Division of the California Department of Social Services (DSS), the Department of Health Care Services (DHCS), the Department of Public Health (CDPH), the Department of State Hospitals (DSH), the Department of Developmental Services (DDS) and Regional Centers, and the Employment Development Department (EDD). Information that can be released without ~~client~~ individual consent to these agencies is limited to the following:

(A) The status of the individual including whether they are in training.

(B) Information relating to the IPE such as employment goal, training received, changes made to the plan, etc.

(C) The projected time in plan.

(D) Whether EDD, DSS, or California Department of Education (CDE) purchased services will be utilized in the implementation of the plan and the information, except medical information, necessary to obtain those services.

(E) The extent of client participation in the plan.

(F) The date of employment or on-the-job training.

(G) The date the case is closed or training is completed or ceases, and if it ceases prior to completion, the reasons therefore.

(6) Disclosure of information in the case record may be made to medical personnel, either private or governmental, when in the opinion of a member of the professional staff of the Department a medical emergency exists.

(7) Disclosure of information in the case record, except that which would disclose the results of any HIV test performed, may be made to protect the potential victim when, in the exercise of reasonable skill, knowledge and care, a member of the professional staff of the Department determines, based on reliable information, that an individual poses a danger of violence to another person, or themselves.

(8) Disclosure of information in the case record may be made to an employee of the Department, or a designated representative of an employee, when such employee has punitive action taken against him or her by the Department and such action is based, or partly based, on information in a case record. Such disclosure shall be conditioned on a written agreement to protect the information from unauthorized disclosure.

(9) Disclosure of written materials and other information may be made to either of the following:

(A) An impartial hearing officer when such disclosure is necessary for the resolution of an appeal as provided in Section 7354 of these regulations.

(B) An Equal Employment Opportunity Counselor or Investigator, or the Chief, Office of Civil Rights when the disclosure is necessary to accomplish any of the following:

1. Review a complaint for prima facie evidence of discrimination.

2. Resolve a complaint of alleged discrimination.

3. Conduct an investigation of a complaint of alleged discrimination.

(10) Disclosure of information in the case record may be made to a prospective employer of a individual of the Department without specific written consent, except medical and psychological, provided that such client has signed the general consent statement on the Application for Services.

(11) Disclosure of personal and confidential information for research purposes shall be made only at the discretion of the Department, if:

(A) the research is directly connected with the vocational rehabilitation of disabled individuals;

(B) the organization or individual gives satisfactory written assurance that the information will be used only for the purpose for which it is provided;

(C) the information provided will not be released to persons not directly connected with the study under consideration;

(D) the final product of the research will not reveal any information that would tend to identify any person without the written consent of such person and the Department;

(E) the plan of the organization or individual for maintaining confidentiality of the information provided is approved by the Department prior to the initiation of the research project.

(b) The Department shall keep an accounting of those disclosures so designated by the Information Practices Act of 1977.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.24 and 1798.25, Civil Code; Sections 19000, 19013 and, Welfare and Institutions Code; and 34 CFR Sections 104.7, 104.51, 104.61, 361.19 and 361.38.

**7143.5. Prohibitions Against Disclosure to Law Enforcement Officials.**

(a) No disclosure shall be made to any law enforcement official, including any public prosecutor, without the specific written consent of the individual except as is necessary under section 7143(a)(7). However, nothing in these regulations shall be construed as prohibiting an employee of the Department from seeking the assistance of a law enforcement official where an individual commits or threatens to commit a crime on the premises of the Department or against Departmental personnel, or where an individual, after investigation, is reasonably believed to have committed a fraudulent or otherwise illegal act or acts against the Department or Departmental personnel, and such disclosure is made for purposes of further investigation and/or prosecution for such act or acts. Nothing in this section shall be construed to allow the disclosure of information to law enforcement officials, including public prosecutors, for purposes of investigating or prosecuting illegal acts allegedly committed against a third party or entity, except as necessary under section 7143(a)(7).

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 1798.30, Civil Code. Reference: 34 CFR Section 361.38.

**Chapter 3. Vocational Rehabilitation Services for Individuals With Disabilities**

**Article 1. General Provisions**

**7149. Scope of Vocational Rehabilitation Services for Individuals with Disabilities.**

(a) The Department shall, in collaboration with the local educational agencies involved, provide or arrange for the provision of, pre-employment transition services for all students with disabilities in need of services, without regard to the type of disability.

(1) Pre-employment transition services shall be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(b) As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s informed choice, the Department shall make the following vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, advance in, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(1) Assessment for determining eligibility and priority for services by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with Sections 7001.5 and 7062 of these regulations.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with Sections 7001.5, 7128(b), and 7130.5(b) of these regulations.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with Section 7029.6 of these regulations.

(4) 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, other government agencies, independent living centers, and local extended employment service providers, consistent with the requirements of Sections 7037 and 7038 of these regulations.

(5) Physical and mental restoration services, in accordance with Section 7020 of these regulations, to the extent that financial support is not readily available from a source other than the Department.

(6) Vocational, educational, and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (from universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for by the Department unless maximum efforts have been made by the Department and the individual to secure grant assistance, in whole or in part, from other sources to pay for that training.

(7) Maintenance, as defined in Section 7019 and provided under conditions specified in Section 7177 of these regulations.

(8) Transportation provided to enable participation in any vocational rehabilitation service, in accordance with the definition in Section 7029 of these regulations.

(9) Vocational rehabilitation services to family members, as defined in Section 7015 of these regulations, of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services, including 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.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

~~(~~13) Supported employment services in accordance with the definition of that term in Section 7028.1 of these regulations.

(14) Personal assistance services in accordance with the definition of that term in Section 7019.7 of these regulations.

(15) Post-employment services in accordance with the definition of that term in Section 7021.5 of these regulations.

(16) Occupational licenses, tools as defined in Section 7028.4 and equipment as defined in Section 7013.2 of these regulations, and initial stocks and supplies.

(17) Rehabilitation technology in accordance with the definition of that term in Section 7024.7 of these regulations.

(18) Transition services in accordance with the definition of that term in Section 7028.6 of these regulations.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce ~~investment~~ development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in Section 7006.6.

(21) Other goods and services, in accordance with Section 7174 of these regulations, that are determined necessary for the individual with a disability to achieve an employment outcome.

(c) The designated state unit may provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program as defined in 34 CFR 361.5. Examples of special circumstances include the destruction by natural disaster of the only available center serving an area or a state determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated state unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the state unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) *Management services and supervision* includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) *Initial stocks and supplies* include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the designated state unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated state unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the state unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Consultation and technical assistance services to assist state educational agencies and local educational agencies in planning for the transition of students and youth with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities who may not have yet applied or been determined eligible for vocational rehabilitation services, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the state to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an individualized plan for employment goal. Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title demonstrates—

(i) Such eligibility;

(ii) Previous completion of a bachelor’s degree program at an institution of higher education or scheduled completion of such a degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master’s degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that—

(A) No training provided at an institution of higher education may be paid for with funds under this program unless maximum efforts have been made by the designated state unit to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(B) Nothing in this paragraph prevents any designated state unit from providing similar support to individuals with disabilities within the state who are eligible to receive support under this title and who are not served under this section.

(d) If the designated state unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723; 34 CFR 361.48 and 361.49; Section 19011, Welfare and Institutions Code.

**Article 2. Counseling and Placement**

**7151. Counseling, Guidance and Referral Services.**

(a) Counseling and guidance is the core service from which all other vocational rehabilitation services are identified, justified and provided. Counseling and guidance is the process by which the Department assists individuals to understand and focus on the vocational significance of their unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice in the selection of vocational rehabilitation serviceswith the goal of preparing for, securing, retaining, advancing in or regaining an employment outcome.

(b) Referral services are provided to an individual ~~applicant or client~~ in order to assist that applicant or client to obtain or utilize appropriate community resources.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.48.

**Article 3. Training and Job Coaching Services**

**7154. Training Services.**

(a) Training services shall be provided only to the extent necessary to accomplish either or both of the following:

(1) Facilitate achievement of the vocational objective.

(2) Prepare an individual ~~a client~~ with the skills and abilities necessary to be a competitive candidate for competitive integrated employment.

(b) Advanced training may be provided in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business;

(c) The selection of training services shall be based on the needs of the individual ~~client~~ and the timeliness, availability, and cost of training.

(d) Any training facility which is equipped to meet the special training needs of an individual and meets the standards set forth in chapter 3, subchapter 7 of these regulations may be used.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19152, Welfare and Institutions Code; 34 CFR 361.48

**7155.** **Use of Public or Private Institutions.**

(a) Training in a private institution shall not be provided except when:

(1) It is clear that the training needs of the individual can be better met by a private, correspondence, on-the-job, tutorial, or other training institution or method; or

(2) Overall cost to the Department will be less; or

(3) The training is not available in a public institution; or

(4) Attendance in a public training program would cause a significant delay in the individual's preparation for a suitable employment outcome.

(b) Prior written approval of the Rehabilitation Supervisor shall be required before a Counselor may send an individual to a private school for training or to a college or university for graduate level training. The Rehabilitation Supervisor's decision shall be based upon documentation that the requirements of (a) as well as of Section 7154 and Sections 7196 through 7198 have been met.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR Sections 361.46 and 361.48.

**7159.5.** **Job Coaching Services.**

(a) Job coaching services shall be provided when necessary for the individual to prepare for, secure, retain, advance in, or regain competitive integrated employment.

(b) Job coaching services shall~~:~~ include some or all of the following activities: on-the-job skill training; observation or supervision at the worksite; consultation or training, or both, of coworkers or supervisors; assistance in integrating into the work environment, destination training, assistance with public support agencies, family and residential provider consultation; and any other on- or off-the-job support services needed to reinforce and stabilize job placement.

(c) Whenever possible, job coaching services for deaf or non-English speaking individuals shall be purchased from a service provider equipped to meet the individual's communication needs. When such a provider is not available, the Department shall purchase interpreter services separately.

(d) Be provided in a permanent or temporary, as limited by (d), job setting that meets all of the following conditions:

(1) The setting is community-based.

(2) There is regular contact between the client and co-workers or members of the public who are not disabled.

(3) The individual is paid in accordance with applicable state and federal labor laws.

(e) Job coaching service providers shall submit written reports to the client's Counselor at least once a month describing, at a minimum, both:

(1) The individual's progress toward employment stability as specified in the client's Individualized Plan of Employment (IPE).

(2) Contacts with the individual's employer.

(f) A temporary job setting shall be utilized only when the Counselor has determined that work-related objectives such as the following cannot be accomplished through the provision of job coaching services in a permanent employment setting:

(1) Overcoming the fear of work.

(2) Development of work tolerance.

(3) Evaluation of work behaviors in relation to the proposed occupational objective.

(4) Determination of the level of support, both on and off the job, needed by the client.

(5) Testing of the feasibility of a specified occupational objective.

(6) Provision of intermediate non-threatening steps toward permanent placement.

(g) For individuals whose employment goal may require supported employment, job coaching shall include the type of monitoring specified in the individual’s IPE. At a minimum the monitoring shall include:

(1) For monitoring at the work site, two visits per month to the work site to assess employment stability.

(2) For monitoring away from the work site, two meetings per month with the individual and one employer contact per month to assess employment stability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR 361.5.

**Article 4. Physical and Mental Restoration Services**

**7160.** **Physical and Mental Restoration Services/Purchases-General.**

(a) Physical and mental restoration services/purchases shall be subject to all provisions specified in this section. Services/purchases shall be:

(1) Provided only in accordance with an Individualized Plan for Employment (IPE).

(2) Unavailable in cases of Interim Determination of Eligibility, as defined in Section 7063.

(3) Subject to the similar benefit provisions of Sections 7196 through 7198 and the client financial participation provisions of Sections 7190-7194.

(4) Prescribed/recommended by the attending physician, except as provided in Section 7160.5(a)(4).

(5) Reviewed/approved in writing prior to the provision of the service/purchase, except as provided in 7160.5(c) and in accordance with (b), by one or more of the following as appropriate to the service being rendered or the purchase being authorized:

(A) The Medical Consultant or Psychiatric Consultant. The approving Medical/Psychiatric Consultant shall not be the prescribing/recommending physician specified in (4).

(B) The Vocational Psychologist (if licensed by the Board of Psychology and only in districts that do not have a Psychiatric Consultant).

(C) The Rehabilitation Supervisor.

(D) The Medical Services Officer.

(E) The District Administrator, if services or purchases cost in excess of $5,000 and when renting a wheelchair.

(F) The District Administrator and the Director or the Director's designee in cases of maxillo-facial surgery costing in excess of $5,000.

(G) The Chief Medical Consultant.

(H) The Statewide Psychiatric Consultant.

(I) The Statewide Optometric Consultant.

(J) The Statewide Dental Consultant.

(b) Approval shall occur only after reaching a conclusion, based upon a careful review of the diagnostic study, that the IPE will be jeopardized if the service/purchase is not provided to individuals eligible for vocational rehabilitation services, the service is necessary to both:

(1) Correct or substantially modify, within a reasonable period of time, a physical or mental condition which is stable or slowly progressive. A reasonable period of time shall be determined based upon factors related to the nature of the disability.

(2) Prepare the individual for suitable employment.

(c) Evaluations/progress reports and final treatment reports from physicians, hospitals, rehabilitation centers and other facilities or appropriate providers shall be received and reviewed for recommendation by the Medical/Psychiatric Consultant or the Vocational Psychologist (if the conditions specified in 7160(a)(5)(B) exist) to determine the individual's status/progress related to the likelihood of achieving the desired physical/mental restoration objective.

(1) Progress/final treatment report(s) submitted as a result of a service purchased by the Department shall include an evaluation of the individual's progress, prognosis, functional limitations and capacities.

(2) In addition to the report(s) specified in (1), initial evaluations and report(s) submitted for physical/occupational/speech therapy or for psychiatric therapy/psychological counseling shall include a limited history, diagnosis, summary of functional limitations and capacities and the recommended therapy plan based upon the results of the evaluation or the provision of subsequent services.

(d) All service(s) shall be limited to six sessions/visits, except when:

(1) Physical therapy training in the use of a prosthetic or orthotic appliance has been recommended by the prescribing physician, or

(2) The need for additional sessions/visits has the concurrence of the Medical Consultant and approval of the District Administrator. A written justification prepared by the provider of service shall be submitted to the Department for review and shall include the following:

(A) The basis on which the additional treatment is recommended.

(B) The anticipated number of visits/sessions in excess of six.

(e) When treatment is recommended beyond six sessions/visits the Counselor shall seek alternate ways to provide service based upon available resources.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19010 and 19050, Welfare and Institutions Code; 34 CFR Sections 361.42 and 361.48.

## Article 5. Transportation Services

### 7161. Transportation Services---General.

(a) Transportation as defined in section 7029:

(1) Shall be provided as a supportive service when necessary to provide for those travel expenses resulting from:

(A) A determination of rehabilitation potential.

(B) The provision of counseling and placement services.

(C) The individual's participation in a completion of an approved program of vocational rehabilitation services.

(D) The provision of post-employment services.

(2) Shall not be provided as a sole service because a supportive service is one which only contributes to the individual's ability to receive the benefit of other vocational rehabilitation services. Alone, it is not a vocational rehabilitation service.

(3) Shall not be provided for travel expenses caused by or required solely for personal, social, recreational or other non-vocational reasons.

(4) Shall be provided only to a individual who is engaged in suitable employment as defined in section 7011 under either of the following circumstances:

(A) Until the individual is financially capable of assuming the cost as determined in accordance with section 7161.5 or until the case is closed in accordance with section 7179.2, whichever occurs first.

(B) In accordance with (e).

(b) Prior to provision of any transportation services the Counselor shall determine both of the following:

(1) Whether the individual is eligible for similar benefits in accordance with Sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(2) The ability of the individual to financially participate in accordance with sections 7190 through 7194. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.

(c) The mode of transportation provided shall be the least costly mode which meets the special needs of the individual ~~client~~. Modes of transportation include, but are not limited to:

(1) Publicly owned or contracted transportation such as buses, dial-a-ride and rapid transit.

(2) Transportation available through community resources.

(3) Client-owned vehicles.

(4) Privately owned transportation such as taxi cab, limousine or paratransit companies and charter buses.

(5) Car pools and payment to co-workers.

(6) Car rental agencies.

(d) Additional authorization criteria and rates of payment for specific modes of transportation shall be set by the Department pursuant to sections 7162 through 7163.5.

(e) Once a case is closed because the individual is rehabilitated, transportation services shall be provided only upon written approval of the Rehabilitation Supervisor. The Rehabilitation Supervisor's approval shall be based upon such criteria as verification that:

(1) The services are necessary to support an over-all program of post-employment services as defined in section 7176.

(2) The services are requested within 12 months of the individual ~~client~~'s case closure.

(3) The requirements of (b) have been met.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19018 and 19150, Welfare and Institutions Code; and 34 CFR Sections 361.5, and 361.48.

### 7162.3. Vehicle Insurance.

(a) Vehicle insurance shall be purchased by the Department for an individual’s vehicle only when either of the following conditions exist:

(1) The individual is required to operate his/her own vehicle to complete an Individualized Plan for Employment (IPE). In this instance the amount of insurance purchased shall not exceed the State's legally prescribed minimum level. Prior written approval of the District Administrator shall be required. The District Administrator's decision shall be based upon such criteria as verification that:

(A) The individual is required to operate his/her own vehicle to complete the IPE.

(B) The requirements in section 7161(b) have been met.

(2) A vehicle is required as a condition of employment. In this instance the amount of insurance purchased may exceed the State's legally prescribed minimum level only when the conditions specified in (A) or (B) exist. The approval of the District Administrator shall not be required.

(A) As a condition of employment, additional coverage is required.

(B) A lien-holder requires additional coverage.

(b) The rate of payment shall be the usual and customary charges of the insurer.

(c) The payment shall be made by the Department to the insurer.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150, Welfare and Institutions Code and 34 CFR 361.45 and 361.48.

### 7163.5. Transportation Expenses for Permanent Relocation.

(a) Transportation expenses for permanent relocation shall be provided when:

(1) The individual has accepted suitable employment as a result of the completion of the Individualized Plan for Employment (IPE).

(2) Permanent relocation is more cost effective and feasible than transportation to and from the individual’s current residence and place of employment.

(3) The requirements in section 7161(b) have been met.

(b) Transportation expenses for permanent relocation shall include only the costs specified in (1) or (2).

(1) For self-moves, the costs of renting a truck or trailer plus the amounts specified in section 7162(c). The mileage shall be based upon the most direct route from the client's former residence to the new residence.

(2) For carrier moves, the costs for a licensed carrier that is certified by the State and:

(A) For individuals who own a vehicle and are driving it to the new residence, the amounts specified in section 7162(c). The mileage shall be based upon the most direct route from the client's former residence to the new residence.

(B) For individuals who do not own a vehicle or are not driving it to the new residence, the costs of a one-way fare on the least expensive mode of common carrier which is accessible to the client.

(c) Prior to the authorization of transportation expenses for permanent relocation the written approval of the Rehabilitation Supervisor shall be obtained. If the estimated costs exceed $500 the written approval of the District Administrator shall also be obtained. The Rehabilitation Supervisor's and District Administrator's decision shall be based upon criteria such as verification that the conditions specified in (a) have been met.

(d) The rate of reimbursement shall be the usual and customary charges for the service by the carrier or rental agency.

(e) Payment shall be made directly to the carrier or rental agency, except for the amounts specified in section 7162(c) which shall be paid to the client.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150, Welfare and institutions Code; 34 CFR Sections 361.48.

### 7164. Vehicle Purchase.

(a) A motor vehicle shall be purchased for an individual only when all of the following conditions exist:

(1) The individual for whom the vehicle will be purchased meets all of the following conditions:

(A) Is physically unable to use non-adapted or alternate forms of transportation.

(B) Has competitive integrated employment as a vocational goal and one of the following conditions exist. The individual:

1. Is ready for or participating in vocational training.

2. Is job ready.

3. Has been offered a job.

4. Is already employed in suitable employment.

(C) Has the financial ability to operate, maintain and replace the vehicle as determined pursuant to section 7164.2.

(2) All other modes of transportation, as well as permanent relocation, have been explored and documented and a determination has been made that vehicle purchase is the cost effective means of obtaining transportation necessary to meet the individual’s specialized vocational needs.

(3) The individual has been evaluated by the Department or by a Department-approved mobility evaluation program in accordance with section 7164.4, or has obtained a waiver of the mobility evaluation in accordance with section 7164.6 and one of the following conditions exist:

(A) The individual has a driver's license and has obtained a waiver of the mobility evaluation.

(B) The mobility evaluation program has determined that the individual has a driver's license or has the potential for obtaining a driver's license and agrees that:

1. All driving instruction recommended by a mobility evaluation program shall be mandatory even if the individual has a current driver's license.

2. Until the unlicensed individual receives a driver's license, a licensed driver who has been approved by the Counselor and who has been provided instructions regarding any modifications added to the vehicle shall be utilized at all times.

(C) The individual does not have the potential to obtain a driver's license, but both of the following conditions exist:

1. A determination has been made through the mobility evaluation program or waiver process that the individual meets the passenger criteria.

2. The individual agrees that a licensed driver who has been approved by the Counselor and who has obtained instructions regarding any modifications added to the vehicle shall be utilized at all times.

(4) The individual has signed the Issuance of Vehicle form (DR 290A dated February, 1991) promising to abide by the following conditions while his or her case remains open:

(A) If the individual does not possess a driver's license, only the person(s) specified in (a)(3)(B)2. or (C)2. shall operate the vehicle.

(B) Manufacturers guidelines or General Service Administration's instructions contained in STD 271 (revised 8-78), which is incorporated by reference herein, regarding vehicle maintenance shall be followed.

(C) A record of both vehicle and modification maintenance shall be maintained in STD 271 and shall be reviewed annually by the Rehabilitation Counselor.

(D) The individual shall provide proof of insurance in an amount at least equal to the State's legally prescribed minimum level for the vehicle being purchased.

(E) Until the case is closed, the Department shall be the legal owner of the vehicle. If the case is closed for a reason other than “rehabilitated", the vehicle shall be returned to the Department, unless the individual purchases the vehicle from the Department at fair market value as determined in accordance with section 7194(c). In no instance shall any individual financial participation obligation paid by the individual be refunded.

(F) The individual shall make no alterations to the vehicle or its adaptive equipment without the prior written approval of the Rehabilitation Counselor.

(G) The individual shall obtain any recommended driver instruction and not drive the vehicle independently until all instructions recommended by the Mobility Evaluation program are completed.

(H) If the individual is the driver, the individual shall maintain a valid California driver's license and shall notify the Rehabilitation Counselor if his or her license is no longer valid.

(I) The individual shall notify the Rehabilitation Counselor if the vehicle is involved in an accident.

(J) The individual shall notify the Rehabilitation Counselor of any reason which prevents him or her from carrying out his or her IPE.

(b) The least expensive vehicle which meets the individual 's specialized vocational needs shall be purchased.

(c) The vehicle shall be inspected and approved by the Fleet Administration Division of the Department of General Services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(12), Welfare and Institutions Code; 34 CFR Sections 361.48.

## Article 6. Personal Services

### 7168. Interpreters.

### (a) The following interpreter services for individuals who are deaf or hard of hearing, non-English-speaking, or individuals who are deaf-blind shall be provided when necessary to provide vocational rehabilitation services:

(1) Sign Language Interpretation

(2) Oral Interpretation

(3) Tactile Interpretation

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.42 and 361.48.

### 7170. Tutorial Services.

(a) The following tutorial services shall be provided when necessary for the successful outcome of the Individualized Plan for Employment (IPE):

(1) Academic or vocational skills tutorial services as a supplement to training services specified in Sections 7154 through 7158.

(2) Other tutorial services, including but not limited to, assistance in learning a skill essential to achieving independence or suitable employment, such as assistance in learning to use public transportation.

(b) Prior to the provision of any tutorial services, the Counselor shall determine whether the applicant or client is eligible for similar benefits in accordance with Sections 7196 through 7198, including services available through institutions for higher education. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(c) Whenever possible, tutorial services for the deaf or non-English speaking clients shall be purchased from a service provider who meets both the appropriate qualifications for tutors specified in Section 7301.5 and for interpreters specified in Section 7300. When such a provider is not available, the Department shall purchase tutorial services from a provider who meets the appropriate qualifications specified in Section 7301.5. Interpreter services under Section 7186 shall be purchased by the Department from a provider who meets the appropriate qualifications specified in Section 7300.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR Sections 361.45 and 361.48.

### 7176. Post-Employment Services.

(a) The purpose of post-employment services is to maintain, regain, or advance in competitive integrated employment.

(b) An Individualized Plan for Employment (IPE) for post-employment services shall be completed prior to providing any services.

(c) Post-employment services shall be terminated when the client's employment has been maintained or when a new evaluation of the client's situation is deemed necessary.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(2), Welfare and Institutions Code and 34 CFR 361.5, 361.48, and 363.4(c).

**Chapter 4. Standards for Closing Record of Services**

### 7179. Closing the Record of Services Without an Eligibility Determination.

(a) The Department may not close an applicant’s record of services prior to making an eligibility determination unless:

(1) The applicant declines to participate in, or is unavailable to complete, the assessment for determining eligibility and priority for services conducted pursuant to Section 7062 of these regulations, which includes any trial work experience; and

(2) The Department has made at least three attempts over a 30-day period to contact the applicant or, if appropriate, the applicant’s representative to encourage the applicant’s participation. The first attempt shall be made in writing to the last known address of the applicant or his or her representative.

(b) For purposes of (a)(1) of this section—

(1) An individual is considered to have declined to participate in the assessment to determine eligibility and priority for services when the individual chooses not to participate in vocational rehabilitation services; or when the individual prevents the completion of the assessment by failing to cooperate in such assessment or any part thereof, including repeated failure to keep appointments, maintain contact, or carry out the individual’s responsibilities with respect to the assessment, making threats or engaging in violent conduct, or engaging in abusive language or behavior directed at a Department employee, vendor, or other applicant or eligible individual, when such language or behavior continues after notice is given that the language or behavior is inappropriate.

(2) An individual is considered to be unavailable to complete the assessment to determine eligibility and priority for services when the individual cannot be located or contacted; the individual is unavailable to participate for an extended or indefinite period due to health problems or prolonged confinement in a hospital, nursing home, prison, jail, treatment center, or similar facility, or for another reason; or the individual is deceased.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.42 and 361.44; and Section 19011, Welfare and Institutions Code.

### 7179.1. Closing the Record of Services With a Determination of Ineligibility.

(a) The Department shall close the record of services when it determines that an applicant is ineligible for vocational rehabilitation services or determines that an eligible individual is no longer eligible for services, as specified in Section 7098 of these regulations.

(b) The Department shall review any ineligibility determination based on a finding that the individual is incapable of achieving an employment outcome in accordance with Section 7181.1 of these regulations.

(c) For purposes of (a) of this section, an individual is not eligible for services when any of the following conditions exists:

(1) Following trial work experience, there is clear and convincing evidence, as defined in Section 7004.6 of these regulations, that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual’s disability.

(2) The individual does not have a physical or mental impairment, as defined in Section 7021 of these regulations.

(3) The individual’s impairment does not constitute a substantial impediment to employment, as defined in Section 7027 of these regulations.

(4) The individual does not require vocational rehabilitation services provided by the Department to prepare for, secure, retain, advance in or regain an employment outcome in competitive integrated employment consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including circumstances in which the individual has obtained an employment outcome without benefit from Department services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 722; 34 CFR Sections 361.5, 361.42; and Sections 19011, 19103, and 19151, Welfare and Institutions Code.

### 7179.2. Closing the Record of Services With an Employment Outcome.

(a) The record of services of an eligible individual who has achieved an employment outcome may be closed only if all of the following requirements are met.

(1) The individual has achieved the employment outcome specified in his or her Individualized Plan for Employment (IPE), and the employment outcome is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(3) At the end of the appropriate period specified in (a)(2) of this section, the individual and the Rehabilitation Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(4) The individual is informed through appropriate modes of communication of the availability of post-employment services, as defined in Section 7021.5 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5, 361.47, and 361.56; and Section 19011, Welfare and Institutions Code.

### 7179.3. Closing the Record of Services for Other Reasons.

(a) An eligible individual’s record of services may be closed at any time if the Department determines that the individual is precluded from continued participation in their Individualized Plan for Employment (IPE) and entering competitive integrated employment because the individual ------

(1) Chooses not to participate in, or continue participating in, the vocational rehabilitation program;

(2) Cannot be located or contacted and, as a result, fails to participate;

(3) Is unavailable to participate for an extended or indefinite period due to health problems or a prolonged confinement in a hospital, nursing home, prison, jail, treatment center, or similar facility, or for another reason;

(4) Is deceased;

(5) Fails to cooperate at any point in the vocational rehabilitation program, including repeated failure to keep appointments, maintain regular contact with the Rehabilitation Counselor, or carry out other responsibilities associated with participation in the program specified in Section 7029.9 of these regulations;

(6) Requires extended services for supported employment, and the extended services needed are not available; ~~or~~

(7) Achieved supported employment in integrated employment but did not earn a competitive wage after exhausting the 24 months of supported employment services and any agreed upon extension of time; or

(8) Has engaged in any criminal activity when applying for or receiving vocational rehabilitation services, including fraud or misrepresentation used to obtain services, collusion, or theft.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 720 and 722; 34 CFR Sections 361.5, 361.42, 361.43 and 361.44; and Section 19011, Welfare and Institutions Code.

### 7179.4. Self-employment; Closure with an Employment Outcome.

(a) For purposes of the closure requirements in Section 7179.2(a)(2) and (3) of these regulations, an eligible individual is considered to have achieved an employment outcome in a self-employment setting when:

(1) The self-employment setting is consistent with the individual's personal attributes, including the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice under Article 4.

(2) The individual has maintained self-employment in competitive integrated employment comparable to other individuals similarly situated as specified in the Individualized Plan for Employment (IPE) for a sufficient period of three months to one year.

(3) The individual yields an income that is comparable to the income received by other individuals who do not have disabilities and are self-employed in similar occupations or performing similar tasks, with the same or similar training, experience, or skills but not less than the customary wage and benefit level received by individuals engaged in the same or similar self-employment. ~~and~~

(4) The individual and their Rehabilitation Counselor agree that the employment outcome in the self-employment setting is satisfactory, and the individual is performing well.

(b) At closure, any equipment purchased by the Department and loaned to the individual in connection with the IPE shall be returned to the Department or provided to the individual, as specified in Section 7194 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5 and 361.56; and Section 19011, Welfare and Institutions Code.

### 7179.5. Self-employment; Closure without an Employment Outcome.

(a) The record of services for an eligible individual whose Individualized Plan for Employment (IPE) includes a self-employment setting shall be closed without an employment outcome when:

(1) It is determined that the self-employment setting is not appropriate, as specified in Section 7136.6 of these regulations; or that the eligible individual is unable to maintain competitive integrated employment in the self-employment setting; or the individual has not met the criteria for a successful competitive integrated employment outcome specified in Section 7179.4 of these regulations within 12 months after beginning operation of the small business, whichever occurs earlier; and

(2) The Rehabilitation Counselor (RC) has offered the individual an opportunity to discuss alternative employment settings and other vocational rehabilitation services that could be provided to assist the individual in obtaining employment in an alternative setting, and the individual declines such services or no such services are available.

(b) At closure, any equipment purchased by the Department and loaned to the individual in connection with the IPE shall be returned to the Department or provided to the individual, as specified in Section 7194 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721, and 722; 34 CFR Sections 361.5, 361.45, 361.46 and 361.56; and Section 19011, Welfare and Institutions Code.

### 7179.7. Supported Employment Program; Closing the Record of Services With an Employment Outcome.

### (a) In an individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment will be considered to have concurrently achieved an employment outcome, including customized employment, in supported employment and their record of services may be closed when:

(1) The individual has supported employment services specified in Section 7028.1.

(2) The individual has maintained the employment for a minimum of ~~60~~ 90 days before transition to extended services, to ensure the stability of the employment outcome;

(3) The individual and the Department consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment;

(b) The record of services for a youth with a most significant disability who is receiving extended services provided by the Department will be closed when—

(1) The youth with a most significant disability achieves an employment outcome in supported employment in competitive integrated employment; and

(A) Is no longer eligible to receive extended services provided by the Department because the individual—

(i) No longer meets age requirements established in the definition of a youth with a disability as defined in Section 7030; or

(ii) Has received extended services for a period of four years; or

(iii) Has transitioned to extended services prior to meeting the age or time restrictions established under paragraphs (A) and (B) of this section, respectively; and

(B) Satisfies requirements for case closure, as set forth in Section 7179.2; and

(C) The individual is no longer receiving any other vocational rehabilitation service from the Department.

(D) Funding has transitioned to a source of extended services; and

(E) The individual has maintained the employment for no less than 90 days after transition to extended services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19011 and 19150 and 19150, Welfare and Institutions Code; 29 USC 705 and 34 CFR 361.46, 361.47, 363.1, 363.3, and 363.53 through 363.55.

### 7181.1. Mandatory Reviews After the Record of Services Has Been Closed.

The purpose of this section is to specify circumstances under which the Department must conduct reviews after a record of services has been closed.

(a) The Department must conduct a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance with the requirements in paragraph (b) of this section, for an individual with a disability:

(1) Who has a record of service, as described in Section 7122, as either an applicant or eligible individual under the vocational rehabilitation program; and

(2) Who has achieved employment in which the individual is compensated in accordance with Section 14(c) of the Fair Labor Standards Act; or

(3) Who is in extended employment, including those individuals whose record of service is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the Department must—

(1) Semi-annually review and reevaluate the status of each individual 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 competitive integrated employment or training for competitive integrated employment;

(2) 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 with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive integrated employment as defined in Section 7006.3.

(c) If the Department determines that an applicant is ineligible for vocational rehabilitation services, or determines that an eligible individual, whether or not the individual is receiving services under an Individualized Plan for Employment (IPE), is no longer eligible for services, and the determination is based on a finding that the individual is incapable of achieving an employment outcome, the Department shall review the ineligibility determination within 12 months of the decision and annually thereafter, if such review is requested by the individual or, if appropriate, by the individual’s representative. 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.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5, 361.43, 361.47, and 361.55; and Section 19011, Welfare and Institutions Code.

### Chapter 10. Rates Of Payment

### 7320. General Provisions.

(a) The purpose of this Subchapter is to promulgate the policies and standards that govern the rates of payment authorized by the Department for the purchase of goods and services.

(b) For the purpose of this Subchapter, the following definitions shall apply:

(1) “Goods and Services” means services in compliance with the rehabilitation service provisions of Sections 7150 through 7179 of this Chapter.

(2) “Vendor” means an individual, company, corporation, or other entity who sells goods and/or provides those services required for the rehabilitation process.

(3) “Personal Services” means supportive services, such as, readers for the blind, interpreters, attendants, drivers, Notetakers, and others providing a personal service.

(4) “Competitive Integrated Employment” means employment as set forth in Section 7006.3.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.5.

# Chapter 11. Rehabilitation Facilities and Community Resources For Individuals With Disabilities

### 7330. General.

(a) These regulations establish the Department's policy for:

(1) Granting funds for the establishment of rehabilitation facilities.

(2) Granting funds for innovation and expansion of vocational rehabilitation services.

(3) Purchasing services from rehabilitation facilities and other community resources for individuals with disabilities.

(4) Auditing of grants and contracts awarded to rehabilitation facilities.

(b) Definitions.

(1) “Accredited” means a facility has approval by the Commission on Accreditation for Rehabilitation Facilities (CARF) to provide disabled individuals with restorative and adjustive or employment services. Each facility shall have integrated and coordinated individualized programs placing primary emphasis on one of the following services:

(A) Physical restoration, or

(B) Personal and social development, or

(C) Vocational development, or

(D) Speech pathology, audiology, or

(2) “Certification” means a facility has approval by the Department to provide disabled individuals with specific adjustive or employment services. Each facility shall have integrated and coordinated individualized programs placing primary emphasis on one or more of the following services:

(A) Personal and social development, or

(B) Vocational development, or

(C) Independent living.

(c) The definitions contained in 45 Code of Federal Regulations 1361.1, and Section 19152, Welfare and Institutions Code, apply to this subchapter.

(d) The Department shall establish in writing and shall maintain:

(1) An inventory of rehabilitation facilities, facilities serving primarily individuals who are blind and/or deaf, independent living centers, rehabilitation centers, and other community resources for individuals with disabilities available within the State.

(2) A prioritized list of facility projects and programs necessary to achieve the short-range Department goals.

(e) A State Plan for Rehabilitation Facilities shall be developed annually and distributed to all facilities. The plan shall include by reference the standards and criteria applicable to rehabilitation facilities with respect to physical plant, equipment, personnel, administration, management, safety, and other pertinent conditions.

(f) The inventory, State Plan for Rehabilitation Facilities, and prioritized list shall be developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services.

(g) The Department will provide technical assistance to any public or private non-profit rehabilitation facility to help improve the professional and business practices of the facility.

(h) All programs shall explain the Client Assistance program, including the services provided by the program and how to contact the program, to clients of the Department.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19152, 19154, 19400 and 19401 et seq., Welfare and Institutions Code; 34 CFR 361.21 and 361.45; and 29 U.S.C. 718.

### 7331. Accreditation and Certification.

(a) The Department shall with the exception of facilities providing services primarily to the blind, deaf and/or independent living centers, require that public and private non-profit rehabilitation facilities offering work oriented programs and services be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) in the primary program emphasis of the services to be purchased. Applicants for grant funding must also meet accreditation criteria when applicable or be certified by the Department. To be certified they shall have a plan for seeking accreditation.  
(b) The Department shall supplement programs accredited by CARF with a certification of specific services. This certification will take place no less than every three years and will be based on standards developed by the Department.

(c) The Department shall require other rehabilitation facilities to meet certification standards of the Department. The Standards for Certification shall be developed by the Department in consultation with a representative group of providers and recipients of vocational rehabilitation services.

(d) Upon written request by a Community Rehabilitation Program (CRP) and proof that its annual service expenditures are at or below fifty thousand dollars ($50,000) for three prior, consecutive years, the Department may waive the CARF accreditation requirements herein.

(1) The Department will provide written approval or denial of the request on the condition that annual expenditures do not exceed fifty thousand dollars ($50,000), and may rescind the waiver if the Department determines that the CRP is not in compliance with any law or regulation.

(2) The Department's waiver shall not supersede any other agency's or Regional Center's requirement of CARF accreditation or service standards.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 723; 34 CFR Sections 361.5, 361.48 and 361.50; and Sections 19011 and 19401, Welfare and Institutions Code.

**7332.** **Purchase of Services.**

(a) The Department may purchase vocational rehabilitation services from public or private non-profit rehabilitation facilities which include agencies serving primarily individuals who are blind and/or deaf, independent living centers, and other community resources for individuals with disabilities.

(1) The Department may pay fees for services through a schedule set by the Department and applicable to all rehabilitation facilities or a special negotiated fee for an individual service.

(2) The Department may contract for specific services for an estimated number of clients per month.

(3) The Department may contract with a public or private non-profit rehabilitation facility on a cost sharing basis to provide services for groups of individuals with disabilities. Services for groups shall include but not be limited to:

(A) The removal of architectural barriers.

(B) The purchase of a vehicle to transport clients.

(C) The purchase of telephone-teletype equipment for individuals who are deaf.

(D) The use of therapeutic recreation facilities.

(E) The use of residential facilities to accommodate individuals with disabilities while they are receiving other vocational rehabilitation services.

(F) The purchase of instructional material.

(G) The purchase or adaptation of equipment for training or employment of individuals with disabilities.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.50.

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# Chapter 12. Administrative Review, Mediation, Fair Hearing and Discrimination Complaint Procedures

**Article 1. General Provisions and Administrative Reviews**

### 7350. Definitions and Terms.

(a) For the purposes of this Chapter the following definitions shall apply:

(1) “Appellant” means an applicant, client, ~~or~~ former client, or student with a disability, of the Vocational Rehabilitation or Independent Living Services programs who has filed an oral or written request for an administrative review or a written request for a fair hearing.

(2) “Administrative Review Officer” means a District Administrator who conducts the administrative review.

(3) “Authorized Representative” means the parent of an unemancipated minor or permanent guardian or any person or entity who has been designated by the appellant to act on his/her behalf.

(4) “Administrative Review” means an informal process through which either of the following occur:

(A) The appellant and/or the appellant's authorized representative seek remedy for dissatisfaction with Departmental action.

(B) The complainant and/or the complainant's authorized representative seek remedy for a complaint of discrimination against employees of the Department.

(5) “Complainant” means an applicant, client, ~~or~~ former client, or student with a disability who has filed an oral or written discrimination complaint for an administrative review or a formal written request for a discrimination investigation/resolution.

(6) “Equal Employment Opportunity Counselor” means an employee of the Department who has had specialized training in the counseling and resolution of discrimination complaints.

(7) “Equal Employment Opportunity Investigator” means an employee of the Department who has had specialized training in conducting impartial, formal investigations of discrimination complaints.

(8) “Good Cause” means any of the following:

(A) Death in the immediate family.

(B) Personal illness or injury to the appellant or authorized representative.

(C) Sudden and unexpected emergencies including, but not limited to traffic accidents on the day of the hearing and illness or injury of a household or family member who requires immediate care.

(9) “Impartial hearing officer” means an individual who is qualified under 34 Code of Federal Regulations part 361.5~~(b)(25)~~(c)(24) to conduct a fair hearing.

(10) “Mediation Coordinator” means the independent organization the Department contracts with to schedule and conduct mediation of disputes between individuals and the Department that affect the provision of vocational rehabilitation services.

(11) “Qualified Impartial Mediator” means an individual who:

(A) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) is not a member of the State Rehabilitation Council;

(C) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations and policies governing the provision of vocational rehabilitation services;

(E) has been trained in effective mediation techniques; and

(F) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: 29 USC Section 722; 28 CFR 35.107; 34 CFR 104.7, 104.51, 104.61, 34 CFR 361.5 and 361.48; and Sections 19700.1, 19703, 19704 and 19705, Welfare and Institutions Code.

### 7351. General Provisions.

(a) Any applicant, client, former client, or student with a disability of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing. Any applicant, client, former client, or student with a disability of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(b) Any applicant, client, former client, or student with a disability, who believes he/she has been discriminated against by a Department employee, a contractor or grantee of the Department, or an employee of a contractor or grantee based upon any of the protected statuses of race, color, religious creed, ancestry, national origin, sexual orientation, marital status, medical condition, physical or mental disability, sex, or age shall have an opportunity for a prompt administrative review by the supervisory staff or, as appropriate, by a contractor or grantee, and/or an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department’s Office of Civil Rights and Affirmative Action.

(c) The administrative review process is optional and shall not delay a fair hearing or, in the case of alleged discrimination, an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department’s Office of Civil Rights and Affirmative Action, unless the appellant or complainant and/or authorized representative and the Department agree to a delay. The mediation process is also optional and shall not delay a fair hearing, unless all parties agree to a continuation of the hearing.

(d) Notwithstanding (b), an applicant, client, former client, or student with a disability may file a formal complaint with the U.S. Department of Education, Office for Civil Rights at any time.

(e) Any service(s) currently being provided an individual under an Individualized Plan for Employment (IPE) shall not be suspended, reduced, or terminated pending a final determination pursuant to administrative review provided pursuant to Section 7353 or the final decision pursuant to Section 7358, unless:

(1) The individual or his/her authorized representative so requests; or

(2) The Department has determined that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the appellant or the appellant’s authorized representative, as specified in 29 USC §722(c)(7).

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code;. Reference: 29 USC ~~§~~722; 34 CFR 100.6, 104.7(b), 104.51, 104.61; 34 CFR 361.57; Sections 19703 and 19704, Welfare and Institutions Code.

### 7363. Review of Complaint.

(a) Upon a receipt of either of the following, the Chief, Office of Civil Rights and Affirmative Action shall notify the complainant of receipt of the information and that a review conducted in accordance with (b) shall occur:

(1) A written complaint of discrimination containing all of the information specified in Section 7353.5(a)(3) from an applicant, client, former client, or student with a disability of the Department, and filed within 180 days of the date of the alleged discrimination or within 30 days of receiving written notification from a contractor or grantee in accordance with Section 7335.5.

(2) The summary of the Administrative Review specified in Section 7353.5(b)(2)(A).

(b) The Chief, Office of Civil Rights and Affirmative Action shall review the information received pursuant to (a) to determine both of the following:

(1) Whether the complaint was filed within the specified time limits. If the filing is untimely, the Chief, Office of Civil Rights and Affirmative action shall dismiss the complaint by advising the complainant in writing of the reason for the dismissal and of his/her right to file a complaint with the U.S. Department of Education, Office for Civil Rights.

(2) If prima facie evidence of discrimination exists. This may require the solicitation of additional information from the complainant. If a prima facie case:

(A) Exists, the Chief shall refer the complaint to whomever of the following that the Chief deems appropriate:

1. An Equal Employment Opportunity Counselor for informal counseling and resolution.

2. An Equal Employment Opportunity Investigator for formal investigation.

(B) Does not exist, the Chief shall dismiss the complaint by advising the complainant in writing of the reasons for the dismissal and of his/her right to file a complaint with the U.S. Department of Education, Office for Civil Rights.

(c) When a complaint is referred to an Equal Employment Opportunity Counselor, the Counselor shall attempt to resolve the complaint within 15 working days unless an extension of the counseling period is agreed upon between the complainant and the Counselor. If the complaint is:

(1) Resolved, the Counselor shall summarize the resolution in writing and send copies to all of the following:

(A) The complainant.

(B) The District Administrator.

(C) The Chief, Office of Civil Rights and Affirmative Action.

(2) Not resolved, the Counselor shall refer the complaint back to the Chief, Office of Civil Rights and Affirmative Action for assignment to an Equal Employment Opportunity Investigator for formal investigation. The Counselor shall send Written notification of the referral to the complainant.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 100.6, 100.7, and 104.7, 104.51 and 104.61~~.~~