

WAC 67-25-009 Definitions. (1) "Act" or "the law," except when context indicates otherwise, means the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) of 2014.

(2) "Administrative costs" under the vocational rehabilitation services portion of the unified or combined state plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program, including expenses related to program planning, development, monitoring, and evaluation including, but not limited to, expenses for:

- (a) Quality assurance;
- (b) Budgeting, accounting, financial management, information systems, and related data processing;
- (c) Providing information about the program to the public;
- (d) Technical assistance and support services to other state agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in C.F.R. Sec. 361.49(a)(4);
- (e) The state rehabilitation council and other advisory committees;
- (f) Professional organization membership dues for designated state unit employees;
- (g) The removal of architectural barriers in state vocational rehabilitation agency offices and state-operated rehabilitation facilities;
- (h) Operating and maintaining designated state unit facilities, equipment, and grounds, as well as the infrastructure of the one-stop system;
- (i) Supplies;
- (j) Administration of the comprehensive system of personnel development personnel administration, administration of affirmative action plans, and training and staff development;
- (k) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;
- (l) Travel costs related to carrying out the program, other than travel costs related to the provision of services;
- (m) Costs incurred in conducting reviews of determinations made by personnel of the designated state unit, including costs associated with mediation and impartial due process hearings; and
- (n) Legal expenses required in the administration of the program.

(3) "Applicant" means an individual who has submitted to the department an application or letter requesting vocational rehabilitation services in accordance with WAC 67-25-093.

(4) "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(5) "Assessment" means a review of existing or additional data for one or more of the following (as appropriate in each case):

- (a) An assessment to determine eligibility of an individual with a disability for vocational rehabilitation services in accordance with WAC 67-25-130;

(b) A comprehensive assessment to determine with the individual the employment outcome to be achieved and a detailed plan of services needed to obtain the employment outcome, in accordance with WAC 67-25-205;

(c) An assessment for assignment for an order of selection if the department is unable to serve all eligible individuals, in accordance with WAC 67-25-193;

(d) An assessment through a trial work experience or work skills assessment, if there is a question about the applicant's ability to benefit in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability, in accordance with WAC 67-25-140 and 67-25-220.

(6) "Assistive technology" is defined in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002) as an assistive technology device or assistive technology service:

(a) An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities;

(b) An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(i) The evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(ii) A service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(iii) A service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

(iv) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(vii) A service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

(7) "Clear and convincing evidence" means that the department has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means "unequivocal."

(8) "Client assistance program (CAP)" means a program, authorized under the act, which assists individuals with disabilities to receive those services for which they are eligible under the act by providing information and advocacy.

(9) "Community rehabilitation program (CRP)" means an agency, organization or institution (or unit thereof) that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities as one of its major functions to enable those individuals to maximize their opportunities for employment, including career advancement. These services may include:

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

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language, and hearing therapy;

(f) Psychiatric, psychological, and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational rehabilitation needs;

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Orientation and mobility services for individuals who are blind;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Customized employment;

(p) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(q) Personal assistance services; and

(r) Services similar to the services described in (a) through (q) of this subsection.

(10) "Comparable benefits" means services and benefits, including accommodations and auxiliary aids and services, that are:

(a) Provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;

(b) 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 in accordance with WAC 67-25-230; and

(c) Commensurate to the services that the individual would otherwise receive from the designated state vocational rehabilitation agency.

For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(11) "Competitive and integrated employment" means work that:

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

(i) Is not less than the rate required under the applicable federal, state or local minimum wage law for the place of employment;

(ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not in-

dividuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(iii) 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

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

(b) Is at a location:

(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 worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants 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

(c) 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.

(12) Customized employment means competitive integrated employment, for an individual with a significant disability, that is:

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

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

(c) Carried out through flexible strategies, such as:

(i) Job exploration by the individual; and

(ii) Working with an employer to facilitate placement, including:

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

(B) 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;

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

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

(d) Customized employment may be provided as part of a job placement service in accordance with WAC 67-25-440.

(13) "Department" means the Washington state department of services for the blind.

(14) "Designated state agency (DSA)" and "designated state unit (DSU)" mean the sole state agency (DSA) and division (DSU), designated to administer or supervise the local administration of the vocational rehabilitation services portion of the combined state plan. In Washington state, both the DSA and DSU entities for vocational rehabilitation services for individuals who are blind refer to the department of services for the blind.

(15) "Director," except when the context indicates otherwise, means the executive director of the department of services for the blind.

(16) "Eligible individual" means an applicant for vocational rehabilitation services who meets eligibility requirements in accordance with WAC 67-25-125.

(17) "Employment outcome" means, with respect to an individual, entering, advancing in or retaining full-time or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting, or business ownership), or supported employment (in accordance with WAC 67-25-430), that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(18) "Extended employment" means work in a nonintegrated or sheltered setting for a public or private agency or organization that provides compensation in accordance with the Fair Labor Standards Act. The department does not provide supports for extended employment goals or outcomes.

(19) "Extended services" means ongoing support services and other appropriate services that are:

(a) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in competitive and integrated employment with long-term supports;

(b) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment in a competitive and integrated workplace;

(c) Based on the needs of an eligible individual, as specified in an individualized plan for employment; and

(d) 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.

The department may not provide extended services to an individual who is not a youth with a most significant disability;

Limits for the department providing extended services to youth are described in WAC 67-25-565.

(20) "Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(21) "Fair hearing board" means a committee, body, or group of persons established by a state prior to January 1, 1985, that:

(a) Is authorized under state law to review determinations made by personnel of the department that affect the provision of vocational rehabilitation services; and

(b) Carries out the responsibilities of the impartial hearing officer (see subsection (23) of this section).

(22) "Family member" for purposes of receiving vocational rehabilitation services in accordance with WAC 67-25-230 and 67-25-485 means an individual:

(a) Who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(23) "Impartial hearing officer" 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 for the department;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(d) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the combined state plan, and the federal and state regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

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

(24) "Individual who is blind" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.

(25) "Individual with a disability" for purposes of this chapter means an individual who:

(a) Has a physical or mental impairment which results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services.

(26) "Individual with a most significant disability" means an individual who meets the department's criteria for an individual with a most significant disability:

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

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(27) "Individual with a significant disability" means an individual who meets the department's criteria for an individual with a significant disability:

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

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(28) "Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in

which case the court-appointed representative is the individual's representative.

(29) "Informed choice" means the process by which an individual receiving vocational rehabilitation services from the department makes decisions about rehabilitation goals and the services and service providers necessary to reach those goals. Informed choice places primary responsibility for action and decision making with the individual, with support of a vocational rehabilitation counselor. Individuals have a right to make informed choices relating to:

(a) Assessment services in accordance with WAC 67-25-130, 67-25-205, and 67-25-220;

(b) Options for developing the individualized plan for employment in accordance with WAC 67-25-230;

(c) Vocational rehabilitation services and service providers in accordance with WAC 67-25-265; and

(d) Employment outcome and work setting in accordance with WAC 67-25-553.

(30) "Integrated setting" means:

(a) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals; and

(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 worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants 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.

(31) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(32) "Native American; American Indian tribe; American Indian; reservation."

(a) "Native American" and "American Indian" refer to an individual who is a member of an Indian tribe, a native or a descendant of a native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(b) "American Indian tribe" is any federal or state American Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1));

(c) "Reservation" is a federal or state Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Na-

tive Claims Settlement Act (43 U.S.C. 1601 et seq.); or a defined area of land recognized by a state or the federal government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(33) "One-stop delivery system" or "workforce development system" is the system that brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(34) "Participant" means any individual with a disability:

(a) Who has been found eligible for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department; or

(c) Is potentially eligible and actively engaged in the department's preemployment transition services.

(35) "Physical or mental impairment" means:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(36) "Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(37) "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term "rehabilitation technology" is broadly inclusive of the terms "rehabilitation engineering," "assistive technology devices," and "assistive technology services."

(38) "Special wage certificate" means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 C.F.R. Part 525 that authorizes payment of sub-minimum wages, wages less than the statutory minimum wage.

Special wage certificate entity means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate

(39) "Statewide workforce development system" means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The department is designated as a Title IV core partner within the workforce development system, and has shared responsibilities in combined state planning, common performance measures, and leveraging resources and services through the American job centers.

(40) "Student with a disability" means, for the vocational rehabilitation program, an individual with a disability in a secondary, postsecondary, or other recognized education program who:

(a) Is not older than twenty-one years old; and

(b) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or is an individual with a disability for purposes of section 504 of The Rehabilitation Act of 1973.

(41) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

(42) "Supported employment" means 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, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities:

(a) 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

(b) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated state unit, in order to perform this work.

(43) "Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(44) "Vocational rehabilitation (VR) counselor" means a qualified employee of the department who has direct responsibility for providing or supervising the provision of all rehabilitation services to participants.

(45) "Vocational rehabilitation services" means any goods or services necessary for a participant to achieve an employment outcome provided in accordance with WAC 67-25-265.

(46) "Youth with a disability," for purposes of the vocational rehabilitation program, means an individual with a disability who is not older than twenty-four years of age.

[Statutory Authority: P.L. 113-128 and 34 C.F.R. Part 361. WSR 18-14-101, amended and recodified as § 67-25-009, filed 7/3/18, effective 8/3/18. Statutory Authority: Chapter 74.18 RCW. WSR 05-08-097, § 67-25-005, filed 4/4/05, effective 5/5/05; WSR 98-23-078, § 67-25-005, filed 11/17/98, effective 12/18/98. Statutory Authority: Chapter 74.15 RCW. WSR 95-06-057, § 67-25-005, filed 2/28/95, effective 3/31/95. Statutory Authority: Chapter 74.18 RCW. WSR 91-20-010, § 67-25-005, filed 9/20/91, effective 10/21/91; WSR 85-06-030 (Order 85-02), § 67-25-005, filed 3/1/85. Statutory Authority: 1983 c 194 § 18. WSR 84-19-003 (Order 84-04), § 67-25-005, filed 9/6/84; WSR 84-01-042 (Order 83-08), § 67-25-005, filed 12/15/83. Formerly WAC 67-20-005.]