GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department on Disability Services

POLICY	
Department on Disability Services	Subject: Order of Selection
Responsible Program or Office: Rehabilitation Services Administration	Policy Number: 2014-RSA-POL001
Date of Approval by the Director: June 13, 2014	Number of Pages: Seven (7)
Effective Date: July 29, 2014	Expiration Date, if Any: NONE
Supersedes Policy Dated: August 17, 2010	
Cross References and Related Policies: Section XIV (Due Process) of the RSA Policies and Procedures Manual	

I. PURPOSE

The purpose of the Order of Selection Policy is to specify the order in which eligible individuals will be served based on the availability of resources if the District of Columbia Rehabilitation Services Administration ("DCRSA" or "the Agency") cannot provide services to all eligible individuals, and to provide justification for the Order of Selection, in accordance with 34 CFR § 361.36. If DCRSA determines that sufficient resources are not available to provide vocational rehabilitation ("VR") services to all eligible individuals, it shall institute an Order of Selection for services which prioritizes eligible individuals from most significant to least significant disability, at the time of rendering services. This shall be done by evaluating, in consultation with the State Rehabilitation Council ("SRC"), the need to establish an Order of Selection; prioritizing specific categories of the Order of Selection; criteria for determining individuals with the most significant disabilities; and administration of the Order of Selection. The Order of Selection shall not apply if DCRSA determines that it can (i) continue to provide services to all individuals currently receiving services; (ii) provide assessment services to all individuals expected to apply for services in the next fiscal year; (iii) provide services to all individuals who are expected to be determined eligible in the next fiscal year; and (iv) meet all program requirements.

II. APPLICABILITY

This policy shall apply to individuals who are eligible for VR services and for whom an eligibility determination has been made, and to all DCRSA staff. The Order of Selection shall not apply to an individual applying for or receiving Independent Living Services under Title VII of the Rehabilitation Act, or to an individual who has begun to receive services

under an Individualized Plan for Employment ("IPE") before the effective date of the Order of Selection.

III. AUTHORITY

The Rehabilitation Act of 1973, as amended (P.L. 105-220; 29 U.S.C. § 701 *et seq.*); Rehabilitation Services Program Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-332; D.C. Official Code § 32-332); 29 D.C.M.R. § 126 (District of Columbia Municipal Regulations, 2007); and 34 C.F.R. § 361.36 (Code of Federal Regulations).

IV. POLICY

It is the policy of DCRSA that in the event the Agency enters an Order of Selection, priority is given to individuals with the most significant disabilities. Individuals shall be placed in, and informed of, the highest category for which they are determined to qualify. Under an Order of Selection, those individuals with the most significant disabilities ("MSD") (Category I) shall be served first, then those with significant disabilities (Category II), and then finally, those with non-significant disabilities (Category III). The category determination is based on the individual's functional capacities, the services needed to reduce the impact of disability-related limitations, and the duration of the rehabilitation services required for the individual to achieve an employment outcome. Significance of disability shall be based on existing information and may be amended at any time during the life of the case, and must not be based on a specific diagnosis or disability; any duration of residency requirement, provided the individual is present in the State; gender, race, color, or national origin; source of referral; type of expected employment outcome; the need for specific services or anticipated cost of services required by an individual; or the income level of an individual or an individual's family.

If DCRSA institutes an Order of Selection, it will notify all eligible individuals of the priority categories in the Order of Selection, the individual's assignment to a particular category, and his or her right to appeal the category assignment including information on the appeal process, such as the informal administrative review meeting, mediation, and formal review by an impartial hearing officer. Additionally, DCRSA will provide services to each individual in a higher category before serving any individual in a lower category; maintain a waiting list of each eligible individual who cannot be served; notify each individual as funding becomes available and the individual becomes next in line for services, based on the priority established by the Order of Selection and the waiting list; and provide each eligible individual who cannot be served with information and referrals to other Federal and DC programs which may be able to meet their employment needs. As used in the below subsection (entitled "Significance of Disability Categories"), the term "extended period of time" shall mean 90 days or longer.

A. Significance of Disability Categories

1. Category I ("individuals with most significant disabilities") shall include individuals:

   (a.) who have a significant disability and who, should the DCRSA State Plan implement Order of Selection procedures pursuant to 34 C.F.R. § 361.36, are

provided priority vocational services; and

(b.) who have a severe physical or mental impairment which 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

(c.) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(d.) who also satisfy the qualifications for Category II (directly below).

2. Category II ("individuals with significant disabilities") shall include individuals:

   (a.) who have a severe physical or mental impairment which 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; and

   (c.) who have one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, muscular-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.

3. Category III ("individuals with non-significant disabilities") shall include individuals:

   (a.) who have a physical or mental impairment which does not meet the criteria set forth in Categories I and II; and

   (b.) whose disabilities constitute or result in a substantial impediment to employment; and

   (c.) who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

B. Functional capacities to be reviewed for significance of disability

1. DCRSA must determine which functional capacities of an individual are seriously limited by reviewing and assessing available information/reports including information provided by the individual and the individual's family, or assessments ordered by DCRSA if existing information is not available, and by professionals' observations. "Seriously limits" means that the limitation in functional capacity results in significant consequences in terms of intensity, frequency, or duration in relation to achieving an employment outcome.

2. The VR Specialist must consider the following elements when determining whether the impairment substantially limits a functional capacity:

   (a.) Intensity – The degree to which the limitation affects the individual's ability to function.
   (b.) Frequency – The number of times a given limitation affects the individual's ability to function within a set period of time.
   (c.) Duration – The length of time the limitation has existed or is expected to last.

3. Functional capacities to be considered are:

   (a.) Mobility: Mobility refers to the ability to move in one's environment with ease and without restriction, from place to place inside and outside the home. A substantial limitation in mobility exists if: (i) the person requires assistance from others to get around in the community because of the disability; or (ii) if the individual requires modifications, adaptive technology, or accommodations (not typically made for other workers) to move around the community; or (iii) if the person needs specialized training to learn to move around in the community. The following circumstances do not constitute substantial, disability-related limitations in mobility, though they may be considered in rehabilitation planning as related factors: absence of or limitations in public transportation available in a geographic area; loss of driving privileges because of accumulation of points and/or charges such as DUI (driving under the influence); or lack of a personal vehicle, although they may need to be considered in rehabilitation planning as related factors.
   (b.) Communication: Communication is the ability to effectively convey thoughts, ideas, and/or exchange information through words or concepts (writing, speaking, listening, sign language, or other adaptive methods). A substantial limitation in communication exists if (i) the disability results in severely impaired expressive or receptive communication, either oral or written; or (ii) if to communicate effectively, the individual requires modifications or adaptive technology; or (iii) accommodations not typically made for other workers. The individual may not be initially understood by others or may not understand others. Communication problems stemming solely from a language barrier or cultural differences (i.e., that are not disability-based) would not constitute substantial limitations in communication (though they may need to be considered in rehabilitation planning).
   (c.) Self-care: Self-care is the ability to manage oneself or one's living environment (including but not limited to eating, toileting, grooming, dressing, money management, and medication) as they affect the individual's ability to participate in services or work-related activities. Limitations may affect all or specific tasks and may occur because of physical, cognitive, or emotional impairments. A substantial limitation in self-care exists if the disability results in the individual's dependence on other individuals, services, or devices to manage oneself or one's living environment. Inadequate financial resources that are not disability-related shall not constitute substantial limitations in self-care, but shall be accounted for in rehabilitation planning.
   (d.) Self-direction: Self-direction refers to the ability to plan, initiate, problem

solve, organize, and independently carry out goal-directed activities related to self-care, socialization, recreation, and work. A substantial limitation in self-direction exists if: (i) due to the disability, the individual is confused or disoriented, or requires assistance or intervention on an ongoing basis; or (ii) intermittently, s/he is unable to perform tasks, monitor his or her own behavior, and make decisions. Developmentally-appropriate impulsivity and lack of focus by themselves would not constitute a substantial limitation in self-direction for transitioning students, but might need to be considered in rehabilitation planning.

(e.) Interpersonal skills: Interpersonal skills refer to the ability to establish and maintain personal, family, community, and work relationships. A substantial limitation in interpersonal skills means that because of the disability, the individual has limited or no ability to interact with others in an appropriate manner or is unable to relate to peers or coworkers without exhibiting inappropriate behaviors. Immaturity which is a common characteristic of teenagers and may be expressed as lack of developed communication skills, in and of itself, does not constitute a substantial limitation in interpersonal skills, but might be considered in rehabilitation planning.

(f.) Work tolerance: Work tolerance is the capacity to perform effectively and efficiently in jobs that require various levels of physical and/or psychological demands, for at least a partial workday. A substantial limitation in work tolerance exists when an individual requires modification, adaptive technology, or accommodations (not typically made for other workers) in terms of capacity or endurance. For example, the individual may not be able to sustain an 8-hour workday, meet production standards, or perform at a consistent pace without frequent rest breaks. Individuals capable of full-time employment who choose to work less than full-time in order to retain benefits or for other reasons are not considered to have a substantial limitation in work tolerance.

(g.) Work skills: Work skills refer to the ability to perform specific tasks required to carry out job functions, the capacity to benefit from training in the necessary skills, and the capacity to practice the work habits needed to remain employed. A substantial limitation in work skills exists when the disability results in an inability to obtain or maintain employment normally available to persons of equivalent age, education, training, or experience. In order to acquire work skills, the person requires modifications, adaptive technology, or accommodations not typically made for other workers. For example, a transitioning youth who lacks work skills because of age does not, by itself, constitute a substantial limitation in work skills, but may be considered in determining limitations related to work skills. Anticipated difficulty in achieving work skills, and requirements for AT and other modifications, aside from absence of work experience, may be considered in determining limitations related to work skills. In determining whether there are substantial limitations in work skills, the impact of the disability on specific employment goals (as opposed to the entire universe of jobs) shall be considered. For example, a math impediment may have a significant impact on an individual's ability to be an engineer, but little impact on other careers, including Vocational Rehabilitation ("VR") Specialist or DDS Examiner.

C. Other Governing Provisions

1. Social Security: An individual who has a disability and is receiving SSI or SSDI benefits, as determined by the Social Security Administration, is considered an individual with a significant disability. Further review by the VR Specialist of the individual's functional capacities may result in a determination that the individual has a most significant disability.

2. Delayed Status (Waiting List): In the event that an Order of Selection is implemented, eligible individuals who cannot presently be served under the Priority of Services/Order of Selection will be advised that their record will be placed on a waiting list for a year, during which time they will be advised if Agency resources become available to provide the requested services. In the event that the Agency is unable to serve all individuals within a given category, individuals will be prioritized within each Category based on the date of receipt of their signed application. VR Specialists will provide information about other programs and will refer individuals placed on the waiting list to other programs which may be able to assist them.

V. RESPONSIBILITY

The responsibility for this policy is vested with the Director of the Department on Disability Services ("DC DDS"). Implementation for this policy is the responsibility of the Deputy Director, Rehabilitation Services Administration ("DCRSA").

VI. STANDARDS

1. An assigned DCRSA VR Specialist shall first make an eligibility determination and then identify and assign eligible individuals based on the severity of disability in accordance with the following three categories: Individual with a most significant disability (Category I), Individual with a significant disability (Category II), and Individual with a non-significant disability (Category III).

2. DCRSA shall notify all eligible individuals of the priority categories in the Order of Selection, their assignment to a particular category, and their right to appeal the category assignment.

3. In the event that DCRSA enters into an Order of Selection:

   (a.) DCRSA shall ensure that the Order of Selection is implemented on a statewide basis and that resources for providing services under the State Plan are consistent with the Order of Selection.
   (b.) DCRSA shall provide services to each individual in a higher category before serving any individual in a lower category.
   (c.) DCRSA shall maintain a waiting list of each eligible individual who cannot be served, and shall notify each individual as funding becomes available and the individual becomes next in line for services, based on the priority established by the Order of Selection and the waiting list, starting with Category I (MSD).

(d.) DCRSA shall provide each eligible individual who cannot be served with information and referrals to other federal and District of Columbia programs which may be able to meet their employment needs.

(e.) The waiting list shall be reviewed annually to ensure that services are being provided on a District-wide basis and that the determination of priority category does not bar or discriminate against any eligible individual based on impermissible factors in accordance with 34 C.F.R.§ 361.36(d)(2).

Laura L. Nuss
Director

7/29/14
Date

Andrew Reese
Deputy Director for RSA

7/29/14
Date