STATE OF WISCONSIN)
) SS
DEPARTMENT OF WORKFORCE)
DEVELOPMENT)

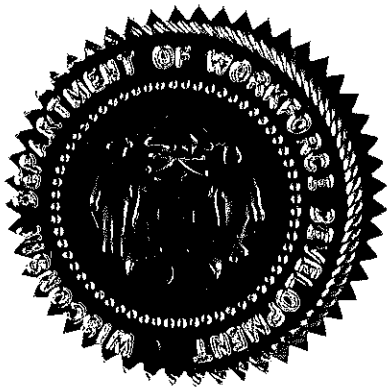
TO THE PEOPLE OF THE STATE OF WISCONSIN:

I, Raymond Allen, Secretary of the Wisconsin Department of Workforce Development and custodian of the department's official records, certify that the attached rule affecting ch. DWD 65, relating to order of selection for vocational rehabilitation services, was duly approved and adopted by this department on June 14th, 2018.

I further certify that I have compared the attached rule copy with the signed original on file with the department and that the attached copy is a true and complete copy of the original.

Signed and sealed at the department offices in the city of Madison, Dane County, Wisconsin, this 14 day of June, 2018.

Raymond Allen, Secretary



Rules Clearinghouse No. 18-013

ORDER OF THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT CREATING AND ADOPTING RULES

1 The Wisconsin Department of Workforce Development adopts the following order ***to***
2 ***repeal*** DWD 65.03 (1), (2), (4), (5), (7), (8), (11), (13) to (15), (19) to (24), (26) and (27), 65.05
3 and 65.07 (2); ***to renumber and amend*** DWD 65.08; ***to amend*** DWD 65.03 (9), (10), (12), (16),
4 (18) and (25), 65.07 (1), 65.08 (title), 65.09, 65.10 and 65.11; ***to repeal and recreate*** DWD
5 65.01, 65.02, 65.03 (3) and (17), 65.04, and 65.07 (3); and ***to create*** DWD 65.03 (5m), (12m),
6 (18m) and (25m), 65.07 (4), 65.09 (Note) and 65.11 (Note) relating to an order of selection for
7 vocational rehabilitation services.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes Interpreted: Ch. 47, Stats.

Statutory Authority

Statutory Authority: ss. 47.02 (1) and 47.02 (1m), Stats.

Explanation of Statutory Authority

Section 47.02 (1), Stats., allows the department to adopt methods of administering the vocational rehabilitation program to maximize federal participation. Section 47.02 (1m), Stats., allows the department to cooperate with federal government to carry out federal regulations for vocational rehabilitation.

Related Statute or Rules

Chapter 47, Stats. – Vocational Rehabilitation; Specialized Programs for Persons with Disabilities.

Plain Language Analysis

The proposed rule will make the following changes to the definitions:

- Creates the definition "student with a disability."
- Repeals the definitions "Act," "application," "communication," "division," "district director," "functional limitations," "interpersonal skills or acceptance," "mobility," "self-care," "self-direction," "served," "state plan for vocational rehabilitation," "suspended case," "work skills or work history," and "work tolerance" as the terms are not used throughout ch. DWD 65.
- Replaces the definition of "state rehabilitation planning and advisory council" with "Wisconsin rehabilitation council" to reflect the name of the council.
- Replaces the definition "individualized written rehabilitation program" or "IWRP" with "IPE" to align with federal rule regulations.
- Replaces the definition "individual with a severe disability" with "individual with a significant disability" to align with federal rule regulations.
- Replaces the definition "client" with "consumer" to align with federal rule regulations.
- Updates the definitions "employment outcome," "multiple services," "primary services," and "vocational rehabilitation counselor" for clarity and to align with current statute and federal regulations.
- Changes the time under the definition of "extended period of time" from 12 months to 6 months to align with federal regulations.
- Updates or repeals obsolete cross references.

The proposed rule updates procedures and aligns the rule with federal regulations and state statutes including:

- Notifying consumers when an order of selection is imposed or terminated.
- Creating a provision that requires students with disabilities that are receiving pre-employment transition services to continue to receive those services during the evaluation process and if they are placed in a category in an order of selection.
- Clarifying ambiguous language to provide consistency and conform to current drafting standards when imposing an order of selection.
- Clarifying the department's role in notifying consumers when an order of selection is imposed, terminated or continued for consumers who may not be provided services during a 12-month period and providing information on how the consumer can appeal their category placement and request a reevaluation of their category placement based on new documentation not previously considered during the evaluation process.
- Updating and clarifying the procedure by a vocational rehabilitation counselor during an evaluation process.

Under the current rule, the department must publish a class 1 legal notice in the state newspaper when an order of selection if imposed, continued or terminated. The proposed rule repeals this requirement. Under the proposed rule, the department is directed to provide written notification

to each eligible individual of the priority categories in the order of selection, the consumers assignment to a particular category and information on how to appeal their category placement.

The proposed rule updates for clarity s. DWD 65.07 (3) by changing the title from "tie breaker" to "waitlist activation." The proposed rule also amends this section by eliminating unnecessary language to provide improved clarity and understanding.

Under s. DWD 65.09, the proposed rule clarifies how a consumer can request a reevaluation of their category placement when new documentation not previously considered during the evaluation process, is available. Section DWD 65.09 (Note) was created to provide information on where a consumer can request a reevaluation.

The proposed rule updates the current language in s. DWD 65.10 that is obsolete and difficult to understand. The proposed rule will provide the department shall contact each consumer in a category that will not receive services due to an order of selection, to determine if the consumer would like to maintain category placement.

The proposed rule clarifies under s. DWD 65.11 that a consumer may appeal their category placement by submitting a request for a hearing within 12 months of the date an order of selection notice was provided to the consumer. Section DWD 65.11 (Note) was created to provide information on where a consumer can file an appeal.

Summary of, and comparison with, existing or proposed federal statutes and regulations

29 USC 721 requires a state to submit and have approved by the Secretary of the U.S. Department of Labor, a unified or combined state plan in accordance with WIOA (29 USC 3112, 3113) for vocational rehabilitation services. In the event the state cannot provide services to all eligible individuals with disabilities who apply, the state is required to show the order to be followed in selecting eligible individuals for services. An order of selection must include that individuals with the most significant disabilities will be selected first.

34 CFR 361.48 requires each state to ensure that the vocational rehabilitation program, in collaboration with local education agencies, provides or arranges for the provision of pre-employment transition services for all students with disabilities from federal funds and ensures pre-employment transition services are available to all students with disabilities regardless of eligibility for vocational rehabilitation services.

Section 110(d) of WIOA requires the state to reserve 15 percent of the allotted funds for the provision of pre-employment transition services for all students with disabilities.

Comparison with rules in adjacent states

Minnesota, Iowa, and Illinois have similar rules in place related to order of selection for vocational rehabilitation services. Michigan does not appear to have any rules regarding order of

selection. Minnesota rule Chapter 3300 Part 3300.5010, Iowa rule IAC 56.6 (6), and Illinois Title 89, Chapter IV, Subchapter b: Part 533.130 all relate to order of selection.

Summary of factual data and analytical methodologies

Policy analysts and staff of the department's division of vocational rehabilitation's senior leadership team reviewed WIOA, federal regulations and consulted with the Wisconsin Rehabilitation Council.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The proposed rule will have no significant economic impact on small businesses as defined in s. 227.114 (1), Stats. The proposed rule was posted for 14 days to solicit economic impact comments from public.

Effect on small business

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

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Department of Workforce Development
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Telephone: (608) 261-4576
E-Mail: Delora.newton@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Jessica Holton, Policy Analyst
Department of Workforce Development
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Milwaukee, WI 53207
Telephone: (414) 389-6487
E-mail: Jessica.Holton@dwd.wisconsin.gov

Hearing comments were accepted until March 8, 2018.

1 **SECTION 1.** DWD 65.01 is repealed and recreated to read:

2 DWD 65.01 Section 47.02, Stats., requires the department to implement an order of
3 selection when there are insufficient resources to serve all eligible individuals who apply for
4 vocational rehabilitation services. An order of selection shall provide services to individuals with
5 the most significant disabilities first.

6 **SECTION 2.** DWD 65.02 is repealed and recreated to read:

7 DWD 65.02 This chapter applies to the department and to consumers who have applied
8 for vocational rehabilitation services, but do not have an approved IPE. This chapter does not
9 apply to consumers currently receiving services under an approved IPE.

10 **SECTION 3.** DWD 65.03 (1) and (2) are repealed.

11 **SECTION 4.** DWD 65.03 (3) is repealed and recreated to read:

12 DWD 65.03 (3) "Category" means the classification assigned to eligible individuals
13 based on an assessment in each of the seven functional areas if an order of selection is imposed.
14 Eligible individuals are assessed according to the significance of their disability as defined in the
15 Rehabilitation Act of 1973, as amended, 29 USC 701.

16 **SECTION 5.** DWD 65.03 (4) and (5) are repealed.

17 **SECTION 6.** DWD 65.03 (5m) is created to read:

18 DWD 65.03 (5m) "Consumer" means an individual certified by the department as eligible
19 for vocational rehabilitation services.

20 **SECTION 7.** DWD 65.03 (7) and (8) are repealed.

21 **SECTION 8.** DWD 65.03 (9) and (10) are amended to read:

DWD 65.03 (9) "Employment outcome" means ~~preparing for, obtaining~~ entering or retaining full or part-time competitive ~~or non-competitive~~ employment in the integrated labor market consistent with the definition in ~~29 USC 706 (6)~~ 29 USC 705 (11).

(10) "Extended period of time" means a period of ~~time lasting 12~~ 6 or more months ~~based on the expected implementation date of an IWRP to the ending date~~.

SECTION 9. DWD 65.03 (11) is repealed.

SECTION 10. DWD 65.03 (12) is amended to read:

DWD 65.03 (12) "Individual with a ~~severe~~ significant disability" means a ~~client~~ consumer with a severe ~~functional limitation~~ physical or mental impairment which seriously limits one or more functional capacities who will need multiple vocational rehabilitation services over an extended period of time ~~within the definition of this term in 29 USC 706 (15)~~ as prescribed under 29 USC 705 (21).

SECTION 11. DWD 65.03 (12m) is created to read:

DWD 65.03 (12m) "IPE" means an individualized plan for employment.

SECTION 12. DWD 65.03 (13) to (15) are repealed.

SECTION 13. DWD 65.03 (16) is amended to read:

DWD 65.03 (16) "Multiple services" means more than one primary service purchased or provided ~~with funding under the act~~ as part of an approved ~~IWRP~~ IPE to obtain an appropriate employment outcome.

SECTION 14. DWD 65.03 (17) is repealed and recreated to read:

DWD 65.03 (17) "Order of selection" means the establishment of a waiting list to determine which consumers will receive vocational rehabilitation services when resources are not available to all eligible individuals.

SECTION 15. DWD 65.03 (18) is amended to read:

DWD 65.03 (18) "Primary services" means evaluation, counseling and guidance ~~provided by VR staff~~, physical or mental restoration ~~and~~, training, and placement services which ~~would be~~ are necessary to reach an ~~approved IWRP~~ IPE goal~~, but~~. "Primary services" does not include support services such as maintenance, transportation, personal assistance services or services to family members which are provided only to allow ~~a client~~ an individual to participate in one or more approved primary services.

SECTION 16. DWD 65.03 (18m) is created to read:

DWD 65.03 (18m) "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program, who is not younger than 14 years of age and not older than 21 years of age, who is eligible for, or who is receiving, pre-employment transition services.

SECTION 17. DWD 65.03 (19) to (24) are repealed.

SECTION 18. DWD 65.03 (25) is amended to read:

DWD 65.03 (25) "Vocational rehabilitation counselor" means ~~the~~ a department ~~employe~~ employee who ~~collects documentation regarding an applicant's disability, makes recommendations regarding~~ determines an individual's eligibility for vocational rehabilitation services ~~based on that record~~, and approves a ~~client's IWRP~~ consumer's IPE.

SECTION 19. DWD 65.03 (25m) is created to read:

DWD 65.03 (25m) "Wisconsin Rehabilitation Council" means a council composed of members who review, analyze, and advise the division regarding the performance of its responsibilities in providing quality services to people with disabilities as prescribed under 34 CFR 361.16.

SECTION 20. DWD 65.03 (26) and (27) are repealed.

SECTION 21. DWD 65.04 is repealed and recreated to read:

DWD 65.04 Imposing an order of selection. (1) DETERMINING WHEN AN ORDER OF SELECTION IS REQUIRED. The department shall determine prior to the beginning of every federal fiscal year, if adequate resources are available to provide all needed vocational rehabilitation services to all eligible consumers. The department shall consult with the Wisconsin Rehabilitation Council to determine if fiscal and personnel resources are available to meet the needs of all consumers. If the department determines there are insufficient resources to serve all eligible consumers, an order of selection shall be imposed.

(2) CONTINUATION OR TERMINATION OF AN ORDER OF SELECTION. If an order of selection is imposed under sub. (1), the department shall consult with the Wisconsin Rehabilitation Council to determine prior to the beginning of every federal fiscal year, if a continuation or termination of an order of selection is necessary.

(3) PROVIDING SERVICES UNDER AN ORDER OF SELECTION. If an order of selection is imposed under sub. (1), the department shall provide services to consumers with the most significant disabilities before consumers with less significant disabilities as prescribed under DWD 65.07.

SECTION 22. DWD 65.05 is repealed.

SECTION 23. DWD 65.07 (1) is amended to read:

DWD 65.07 (1) EVALUATION PROCESS. ~~For each client, a~~ A vocational rehabilitation counselor shall evaluate ~~the client's~~ each consumer's case record using the functional assessment ~~instrument included in the state plan and, on the basis of the client's existing record, shall recommend, in writing,~~ rating to determine the appropriate category for the ~~client~~ consumer in

~~the~~ an order of selection~~, except that a client may be assigned to a category or a position within a category by federal law. 29 USC 721(a) (5) (A)~~.

SECTION 24. DWD 65.07 (2) is repealed.

SECTION 25. DWD 65.07 (3) is repealed and recreated to read:

DWD 65.07 (3) WAITLIST ACTIVATION. When an order of selection is continued or imposed, services provided will be prioritized based on the date the application was received by the department for consumers assigned to the same category under an order of selection.

SECTION 26. DWD 65.07 (4) is created to read:

DWD 65.07 (4) STUDENT WITH A DISABILITY. If a student with a disability has received pre-employment transition services prior to submitting an application, the department shall continue to provide pre-employment transition services to a student with a disability during the evaluation process under sub. (1) and prior to being determined eligible for vocational rehabilitation services. Pre-employment transition services shall continue if the student with a disability is placed in a category in an order of selection.

SECTION 27. DWD 65.08 (title) is amended to read:

DWD 65.08 (title) Notice to affected ~~clients~~ consumers.

SECTION 28. DWD 65.08 is renumbered DWD 65.08 (intro.) and as renumbered, is amended to read:

DWD 65.08 (intro.) ~~Within 20 working days following publication of the public notice under s. DWD 65.05 of the department's intention to impose or continue an order of selection, the~~ The department shall ~~notify, in writing, each client be who will not be served in the~~ provide written notification to all consumers who may not receive services during a 12-month period

~~beginning on~~ from the effective date of ~~the~~ an order of selection. ~~This~~ The notice shall include all of the following:

(1) The reason for the decision~~, information regarding~~ to impose, continue, or terminate an order of selection and the priority in which services will provided.

(2) Identify the consumer's category placement and information on how ~~and where~~ to file an appeal ~~this action under s. DWD 65.11 and information regarding~~ related to a consumer's category placement.

(3) Information on how ~~and where to submit~~ to request a reevaluation of category placement based on new ~~evidence for review by the department under s. DWD 65.09~~ documentation not previously considered during the evaluation process under s. DWD 65.07 (1).

SECTION 29. DWD 65.09 is amended to read:

DWD 65.09 ~~Review requested by client~~ Request for review of category placement. A ~~client~~ consumer may request a review of ~~his or her~~ their category placement within ~~the~~ an order of selection ~~whenever~~ when new ~~evidence~~ documentation not previously considered during the evaluation process under s. DWD 65.07 (1) is available by submitting ~~a copy of the new evidence with~~ a written request ~~for a redetermination to the district director of the office which provided the notice of the order of selection category~~ to the department with a copy of the new documents.

SECTION 30. DWD 65.09 (Note) is created to read:

DWD 65.09 (Note) Information on how to file a request for reevaluation of category placement will be included in the notice issued under s. DWD 65.08.

SECTION 31. DWD 65.10 is amended to read:

DWD 65.10 The department shall contact each ~~suspended case at least annually~~ consumer in a category that will not receive services due to the imposition or continuation of an

order of selection on an annual basis to determine if the ~~client wants~~ consumer would like to continue ~~as a suspended case or if the case may be closed. If the client chooses to allow his or her case to be closed, the closure reason shall be reported as "other" and this action shall not prejudice any future reconsideration of the individual for services. If this contact is by mail and there is no response within 30 days or if the client has moved and left no forwarding address, the case shall be closed without further notice~~ to maintain category placement. The department shall make multiple attempts, through multiple methods of contact, including the consumers preferred mode of contact, prior to closing any case. If there is no response within 30 days, the department may close the case. Prior to closing any case, the department shall document the dates and methods of contact.

SECTION 32. DWD 65.11 is amended to read:

DWD 65.11 Appeal of assigned position under an order of selection. A ~~client~~ consumer may appeal ~~the decision of the department about the basis for his or her~~ their category ~~under an order of selection for services~~ placement by ~~sending a written~~ submitting a request for a hearing ~~with an explanation of his or her specific issues to the district director of the office which provided the notice of order of selection category within one year of the date of the notice under s. DWD 65.08. Order of selection appeals~~ to the department within 12 months of the date the order of selection notice was provided under s. DWD 65.08. Appeals are heard by impartial hearing officers under procedures established by the department ~~for client appeals~~. A consumer may appeal the decision issued by an impartial hearing officer as prescribed under s. 227.53, Stats.

SECTION 33. DWD 65.11 (Note) is created to read:

DWD 65.11 (Note) Information on how to file an appeal of category placement will be included in the notice issued under s. DWD 65.08.

SECTION 34. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.), Stats.

Dated this 14 day of June, 2018.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Raymond Allen, Secretary