

October 16, 2023

Disability Rights Michigan, Client Assistance Program Comments on Michigan Rehabilitation Services Request for Rulemaking (R 395.1 – R 395.88)

Disability Rights Michigan (“DRM”) is the private, nonprofit, nonpartisan organization mandated to advocate for Michigan’s disability community. DRM operates the Client Assistance Program (“CAP”), which provides information and advocacy to applicants for and recipients of vocational rehabilitation services in Michigan.

The CAP comments on Michigan Rehabilitation Services’ (“MRS”) proposed amendments to the MRS Administrative Rules consist of two documents: 1) this set of written comments, and 2) a redline markup of the MRS draft amendments with the CAP’s proposed revisions to the MRS draft.

The Rehabilitation Act provides that MRS shall actively consult with the Director of the CAP prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services (including making any amendment to such policies and procedures). 29 U.S.C. 721(a)(16)(A). Thus far, MRS has not actively consulted with the CAP concerning this Request for Rulemaking. The CAP expects that MRS will actively consult with the CAP concerning these comments and the CAP’s proposed revisions to MRS’s draft amendments.

The CAP also notes that it is the CAP’s understanding that MRS’s approach to amending its Administrative Rules is to select a certain number of sections to be revised at any given time. In the CAP’s view, this is a flawed approach to amending the rules. The reason for this is that the rules are interrelated. This is particularly true for the definitions, which are not only present in the “definitions” section, but which then, of course, are also used throughout the other rules. Coherent amendments to the rules should address how terms and procedures function within the system of the rules. (MRS’s approach to amending the rules concerning post-employment services (and the CAP’s comments on those amendments) illustrate why this is true.)

In MRS’s Request for Rulemaking, it stated that it is amending the MRS Administrative Rules to “update definitions to align with federal regulations and provide clarity.” The CAP is making these comments with the same purpose.

In the comments below, the CAP provides each MRS rule as it appears in MRS’s draft rule language. Below the draft rule, the CAP provides comments on the rule and the amendments. For some of the rules, such as the definitions, the CAP’s comments are broken down by rule subsection.

MRS's Proposed Amended Rule:

R 395.51 Definitions.

(b) "Client Assistance Program" or "CAP" means the mandated program authorized under the rehabilitation act of 1973, 29 U.S.C. ~~USC 701 to 7961~~. ~~which provides individual and systemic advocacy services to all MRS applicants and eligible individuals including additional information, problem resolution assistance, and assistance with an appeal~~ **The purpose of CAP is to advise and inform applicants and individuals eligible for services and benefits available under the rehabilitation act of 1973, 29 USC 701 to 7961, including students with disabilities under section 113 of the rehabilitation act of 1973, 29 USC 733, and individuals with disabilities employed at subminimum wage under section 511 of the rehabilitation act of 1973, 29 USC 794g. In addition, applicants and eligible individuals may be provided advocacy and representation to ensure their rights in their relationship with projects, programs, and services to protect their rights provided under the rehabilitation act of 1973, 29 USC 701 to 7961.**

CAP Comments:

- MRS is proposing amending its definition of the CAP. Neither the federal regulations concerning the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, nor the federal regulations concerning the CAP, 34 C.F.R. § 370, contain a definition of the CAP. Arguably, MRS does not need to define the CAP – MRS could simply rescind the definition.
- If MRS nonetheless decides to define the CAP in the MRS Administrative Rules, its definition should more closely track the language in the Rehabilitation Act that creates the CAP. In our redline, the CAP has proposed a revised definition that closely tracks the language in the Rehabilitation Act at 29 U.S.C. 732(a).

MRS's Proposed Amended Rule:

R 395.51 Definitions.

(c) "Competitive integrated employment" means work that complies with the following:

(i) Is performed on a full-time or part-time basis, including self-employment, and for which an individual is compensated at a rate that includes all of the following:

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the ~~Fair Labor Standards Act~~ **fair labor standards act** of 1938, 29 U.S.C. ~~USC 206(a)(1)~~ **206** or the rate required under the applicable state or local minimum wage law.

(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.

(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.

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

(ii) Is at a location where the employee with a disability interacts for the purpose of performing the duties of the position with other **individuals persons**, for example, customers and vendors, who are not individuals with disabilities. This requirement does not include 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 other **individuals persons**.

(iii) 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.

CAP Comments:

- Please note that if the definitions are supposed to be in alphabetical order, “Comparable services and benefits” should come before “Competitive integrated employment.”
- MRS is proposing amendments to the definition of “Competitive integrated employment,” but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The CAP is proposing adding “for the place of employment” at the end of R 395.51(c)(i)(A). This is the language used in the definition of “competitive integrated employment” in the federal regulations at 34 C.F.R. § 361.5(c)(9)(i)(A). This clarification matters because the applicable minimum wage law may depend on the place of employment.
- The CAP is proposing substantial revisions to R 395.51(c)(ii) because the language that MRS is using: 1) conflicts with the federal regulations, and 2) is incoherent.
 - o The MRS language requires that the work is at a location where the employee interacts with other individuals who are not individuals with disabilities. This could be read as excluding work that does not involve interactions with individuals other than the employee’s supervisor. This is not what the federal regulations require. The problem is that the MRS language in the first sentence is missing language in the federal regulations that says, “to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.” In other words, MRS’s language requires that the work involves interaction with persons who do not have disabilities, whereas the federal regulations only require that the work involves the same level of such interaction that non-disabled employees in the same job would have. MRS cannot impose a more restrictive definition of “competitive integrated employment” than the one found in the federal regulations.

- MRS has included the language missing from the first sentence of this paragraph in the second sentence, but the language does not belong in this sentence. The second sentence in this paragraph does not make any sense.

MRS's Proposed Amended Rule:

R 395.51 Definitions.

(d) "Comparable services and benefits" means services and benefits, not including awards and scholarships based on merit, that are provided or paid for, in whole, or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits that are available to the individual that the individual would otherwise receive from the designated state vocational rehabilitation agency.

CAP Comments:

- MRS is proposing amendments to the definition of "Comparable services and benefits," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- Specifically, the MRS definition leaves out the parts of the federal regulation, 34 C.F.R. § 361.5(c)(8)(i), that define comparable services and benefits to be: 1) available at the time needed to ensure progress toward achieving the employment outcome and 2) commensurate to the services the individual would receive from MRS.
- In the experience of the CAP, MRS counselors and managers frequently invoke "comparable services and benefits" without recognizing these critical elements of the definition. MRS counselors and managers will suggest that a client simply look elsewhere for resources without attempting to determine if such resources actually exist, much less whether they will be available at the time needed or whether they are commensurate to the service MRS would otherwise provide. In fact, this was one of the issues raised in a recent MRS hearing. MRS simply urged the eligible individual to seek other resources without helping the individual find any such resources, without regard to whether any such resources would be available at the time needed, and without regard to whether they would be commensurate with services MRS would otherwise provide. In fact, MRS suggested that the individual seek loans, which would plainly not be commensurate with MRS services. The silence of the MRS Administrative Rule on central aspects of the federal regulations undoubtedly contributes to the problems the CAP has seen.

MRS's Rule:

R 395.51 Definitions.

(f) "Employment outcome" means entering or retaining full-time employment, or if appropriate, part-time competitive employment in the integrated labor market, supported-employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

CAP Comments:

- MRS is not proposing any amendments to the definition of "employment outcome," but the current MRS definition is not aligned with the federal regulations.
- The "employment outcome" is a central concept in the Rehabilitation Act and the federal regulations. 34 C.F.R. § 361.5(c)(15). Every eligible individual is required to have an individualized plan for employment ("IPE") and that IPE must be designed to achieve a specific employment outcome. Under the federal regulations, the employment outcome is, in turn, defined as entering, advancing in, or retaining competitive integrated employment (a definition in the MRS rules discussed earlier in these comments).
- The current MRS definition of "employment outcome" is fairly close to the definition that existed in the federal regulations in 2014. However, the United States Department of Education amended the definition in 2016 to implement changes to the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,630 (Aug. 19, 2016). It appears that the definition in the MRS Administrative Rules has never been amended to reflect these changes.
- One of the important 2016 amendments to the definition was the addition of the words "advancing in." As the Department of Education explained in the Federal Register when publishing the final amendment, the vocational rehabilitation program is not intended solely to place individuals in entry-level jobs, but rather to assist them to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,671-72 (Aug. 19, 2016). Part of MRS's purpose is to assist eligible individuals to advance in their careers. But MRS's definition of "employment outcome" has not been amended in the past seven years to add this important "advancing in" language.
- The absence of the "advancing in" language in this definition ties directly to the problems discussed below with respect to definitions (h), (m), (p), (q), (r), and MRS Administrative Rule R 395.65 ("Individuals employed at intake").
- Another crucial amendment to the definition was the addition of the term "competitive integrated employment." This term is arguably one of the central foundations of the

Rehabilitation Act, and this term is an essential aspect of the definition of the employment outcome. But the current MRS Administrative Rules do not use this term in their definition of “employment outcome.” The use of the phrase “competitive employment in the integrated labor market” is not a substitute for using the defined term “competitive integrated employment,” which contains very specific requirements.

- The CAP is also putting the reference to customized employment, self-employment, telecommuting, or business ownership into a parenthetical after “competitive integrated employment,” which mirrors the definition in the federal regulations. 34 C.F.R. § 361.5(c)(15). Written this way, it is clear that these are types of competitive integrated employment.

MRS’s Rule:

R 395.51 Definitions.

(g) “Individualized plan for employment” or “IPE” means a written document prepared on a form approved by MRS and developed to afford the individual meaningful opportunity to exercise informed choice in the selection of the following:

- (i) Employment goal.
- (ii) Specific vocational rehabilitation services required to achieve the employment goal.
- (iii) Entities that will provide services.
- (iv) Methods of service provision.

CAP Comments:

- MRS is not proposing any amendments to the definition of “individualized plan for employment,” but the current MRS definition is not aligned with the federal regulations.
- The federal regulations do not contain a definition of the “individualized plan for employment.” Instead, the federal regulations contain two extensive sections: Development of the individualized plan for employment, 34 C.F.R. § 361.45, and Content of the individualized plan for employment, 34 C.F.R. § 361.46. As noted above, the individualized plan for employment or “IPE,” is central to the provision of vocational rehabilitation services under the Rehabilitation Act.
- The problem with MRS’s definition is that it does not begin to capture the extensive requirements applicable to the development and content of an IPE. For example, the federal regulations provide that an IPE must contain a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome. 34 C.F.R. § 361.46(a)(6). But someone reading the definition in the MRS Administrative Rules would have no idea that this is true. While the MRS Administrative Rules also contain sections on the development and content of an IPE, the problem is that this truncated definition is so incomplete that it arguably serves no purpose and someone who did not

read the rules carefully enough might fundamentally misunderstand what an IPE involves.

- In addition, MRS’s definition of “IPE” repeatedly uses the term “Employment goal,” which is not a defined term in either the federal regulations or the MRS Administrative Rules. If MRS continues to believe it is appropriate to try to define “individualized plan for employment,” it would be far better to use the defined term “employment outcome,” thereby more closely aligning the MRS Administrative Rules with the federal regulations and making the MRS Administrative Rules more internally coherent.
- For the reasons set forth above, the CAP proposes that MRS amends this rule to simply be a cross-reference to the MRS Administrative Rules concerning the IPE.

MRS’s Proposed Amended Rules:

R 395.51 Definitions.

(h) “Job in jeopardy” means an individual who is in danger of being terminated from ~~his or her~~ **the individual's** job due to disability-related factors.

~~(m)~~ **(m)** “Seasonal employment” means employment as defined by the United States **Department of Labor** ~~department of labor~~ to be less than 5 months duration and is linked to seasonal or climatic conditions.

~~(p)~~ **(p)** “Temporary employment” means employment for 180 days or less.

~~(q)~~ **(q)** “Underemployment” means employment in which there is a significant discrepancy between the individual's demonstrated abilities and capabilities and the demands of the current job.

~~(r)~~ **(r)** “Unsteady employment” means employment that is seasonal, intermittent, temporary, permanently part-time, or subjects the individual to a pattern of layoffs or variations in the availability of work.

CAP Comments:

- MRS is proposing amendments to the definitions of “Job in jeopardy” and “Seasonal employment,” but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The definitions above ((h), (m), (p), (q), and (r)) should be rescinded from the MRS Administrative Rules because these definitions only relate to MRS Administrative Rule R 395.65 (“Individuals employed at intake”) and this rule should be rescinded because all

parts of this rule have been prohibited under the federal regulations since 2016. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,672-73 (Aug. 19, 2016).

- As noted above, in 2016 – seven years ago – the United States Department of Education amended the federal regulations. One of these amendments provided that state vocational rehabilitation agencies must ensure that their eligibility requirements are applied without regard to the applicant’s current employment status. 34 C.F.R. § 361.42(c)(2)(ii)(E).
- However, MRS Administrative Rule R 395.65 currently provides that an “individual with a disability who is employed may be eligible for MRS services if, as a result of his or her disability, his or her employment does any of the following: (a) endangers the health and safety of the individual or others, (b) is in jeopardy, (c) is unsteady, (d) results in significant underemployment and needed services cannot be obtained from other agencies or resources.” This MRS Administrative Rule puts conditions on the eligibility of an applicant employed at intake, which means MRS considers the applicant’s employment status when determining eligibility. This has been expressly prohibited by the federal regulations for the past seven years.
- In the CAP’s experience, MRS counselors and managers still consider an applicant’s current employment status when determining eligibility. This year, in 2023, the CAP advocated on behalf of an applicant who applied for MRS services in April of 2022. Under the federal regulations, MRS is required to make eligibility determinations within 60 days absent exceptional and unforeseen circumstances. In early March 2023 – eleven months later – MRS still had not made an eligibility determination with respect to this individual. During this delay, in October 2022, the MRS counselor wrote to the individual and advised that the counselor’s management needed to inquire about the individual’s current job status and whether the individual’s job was in jeopardy. In early March 2023, MRS advised the individual and the CAP that MRS anticipated determining the individual was not eligible for services because his job was not in jeopardy. It was evident that neither the counselor nor the managers directly involved understood that the federal regulations prohibit denying eligibility on this basis.
- It seems odd that MRS would bother to make minor edits to two of these definitions, which serve no purpose other than as part of a rule that the federal regulations have prohibited since 2016.
- MRS should rescind MRS Administrative Rule R 395.65 and the definitions listed above.

MRS’s Proposed Amended Rule:

R 395.51 Definitions.

~~(m)~~ **(n)** “Substantial impediment to employment” means a physical or mental impairment, **considering attendant medical, psychological, vocational, educational, communication, and**

other related factors, that materially hinders an individual from preparing for, engaging in, or retaining employment consistent with the individual’s abilities and capabilities.

CAP Comments:

- MRS is proposing amendments to the definition of “substantial impediment to employment,” but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- First, the MRS definition includes the word “materially” before the word “hinders,” but the definition in the federal regulations, 34 C.F.R. § 361.42(c)(52), does not include “materially.” The word “materially” is defined as “substantially,” “considerably,” or “to an important degree.” This word is important because this defined phrase is part of one of the three basic requirements for eligibility. Under the current MRS definition, there could be an argument about whether an applicant’s impairment hinders them “substantially” – but the federal regulations don’t require this – they only require that the impairment hinders the applicant. MRS’s definition makes MRS’s determination of eligibility potentially more restrictive than the federal regulations, and MRS is not permitted to do this.
- Second, the MRS definition does not include the terms “entering into” or “advancing in” that are included in the definition in the federal regulations. The absence of the phrase “advancing in” is particularly important, for the reasons discussed above in the CAP’s comments on the definition of “employment outcome.”

MRS’s Rule:

R 395.51 Definitions.

(n) (o) “Substantial services” means services that are provided in the context of a counseling relationship and the individual’s informed choice, and that make a significant contribution to the individual’s employment outcome. Substantial services may be provided directly, purchased, or arranged.

CAP Comments:

- MRS is not proposing any amendments to the definition of “substantial services,” but the current MRS definition is not aligned with the federal regulations.
- The federal regulations do not include the term “substantial services” or anything resembling it. The term “substantial services” is only used once in the MRS Administrative Rules, in R 395.79 (“Rehabilitated case closure”), which MRS has proposed amending as part of this Request for Rulemaking. As explained below in the CAP’s comments on MRS’s proposed amendments to that rule, the federal regulations

concerning case closure do not contain language comparable to “substantial services,” and it is difficult to understand the purpose of including such language. MRS should rescind the definition of “substantial services.”

MRS’s Proposed Amended Rule:

R 395.51 Definitions.

(~~+~~) (s) “Vocational rehabilitation services” or “VRS” means those services available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Services provided ~~shall~~ **must** be published **in the MRS Rehabilitation Services Manual** ~~policy~~ and be made available to the public.

CAP Comments:

- MRS is proposing amendments to the definition of “Vocational rehabilitation services,” but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The federal regulations contain a definition of “vocational rehabilitation services,” 34 C.F.R. § 361.42(c)(57), that incorporates the list of services contained in “Scope of vocational rehabilitation services for individuals with disabilities,” 34 C.F.R. § 361.48, and “Scope of vocational rehabilitation services for groups of individuals with disabilities,” 34 C.F.R. § 361.49. These federal regulations require the state vocational rehabilitation agency to ensure that the specific services listed are available to eligible individuals. However, these services are not listed anywhere in the MRS Administrative Rules.
- It is the view of the CAP that, under Michigan law, MRS must implement this list of services through a formal rule-making process. The federal regulations provide that MRS must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified under 34 C.F.R. § 361.48 and the criteria under which each service is provided. 34 C.F.R. § 361.50. In *Spear v. Michigan Rehabilitation Services*, 202 Mich. App. 1, 4-5 (1993), the Court of Appeals of Michigan held that MRS was required to implement a needs test through a formal rule-making process where the federal regulations required the state to maintain written policies with respect to any needs test. The issue in *Spears* is analogous to the federal requirements concerning written policies covering the list of vocational rehabilitation services. Publishing the list in the MRS Rehabilitation Services Manual is not implementation through a formal rule-making process.
- The CAP is proposing that MRS amend this Administrative Rule to incorporate the services set forth in the federal regulations. In fact, in this Request for Rulemaking, MRS

has created a new definition, “Pre-employment transition services,” that does exactly this for pre-employment transition services.

MRS’s Proposed Amended Rules:

R 395.53 Purpose.

Rule 3. (1) MRS shall ~~assist~~ **provide vocational rehabilitation services for** eligible individuals with ~~physical or mental~~ disabilities, **consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice**, to prepare for and achieve an employment outcome.

(2) MRS shall make available Pre-ETS statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(3) MRS shall engage with employers to increase job opportunities for individuals with disabilities.

~~(2)~~ **(4) The MRS process is based upon on an Individualized Plan for Employment (IPE) which that** is oriented to an individual’s achievement of a vocational goal. Services provided must be essential to overcome the vocational impediment and must be provided at the least cost to meet the individual’s rehabilitation needs.

CAP Comments:

- MRS is proposing amendments to R 395.53 “Purpose,” but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The federal regulations also contain a “purpose” section. 34 C.F.R. § 361.1. The CAP’s proposed revisions to subpart (1) mirror the language in 34 C.F.R. § 361.1(b), and align the MRS Administrative Rule with the federal regulation. Neither the Rehabilitation Act, 29 U.S.C. 701(b), nor the federal regulations refer to an employment outcome in their purpose sections. Instead, both refer to the goals of competitive integrated employment and economic self-sufficiency. This makes sense because the term “employment outcome” is itself defined by the goal of competitive integrated employment.
- Similarly, in the federal regulations, the word “unique” always accompanies the language concerning an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- Neither the Rehabilitation Act nor the federal regulations contain language in their purpose sections resembling the language in MRS’s R 395.53 subpart (4). This language could be rescinded. However, if MRS decides to retain this language, it must be revised to be consistent with the federal regulations because MRS’s language fundamentally mischaracterizes key elements of what the Rehabilitation Act requires.

- “The MRS process is based on an IPE that is oriented to an individual’s achievement of a vocational goal.”
 - The rule uses the term “vocational goal,” which is not a defined term in the MRS rules (and the term does not appear in the federal regulations) instead of using the term “employment outcome,” which is a core term in the federal regulations.
 - It is too weak to say that an IPE is “oriented to an individual’s achievement of [an employment outcome].” The federal regulations provide that an IPE **must** be designed to achieve a specific employment outcome. 34 C.F.R. § 361.45(b)(2).
 - The current MRS rule fails to acknowledge that the customer chooses the employment outcome. 34 C.F.R. § 361.46(a)(1).

- “Services provided must be essential to overcome the vocational impediment and must be provided at the least cost to meet the individual’s rehabilitation needs.”
 - The federal regulations do not provide that services must be essential “to overcome the vocational impediment.” This is particularly concerning because it is unclear what is meant by “vocational impediment.” This term is not used anywhere else in the MRS rules, and it never appears in the federal regulations. While it is the case that, in order to be eligible for vocational rehabilitation services, there must be determinations that the applicant has a physical or mental impairment and that the impairment constitutes or results in a substantial impediment to employment, MRS is not permitted to limit services to those that directly address how the impairment constitutes or results in a substantial impediment to employment.
 - Vocational rehabilitation services must be needed to achieve the employment outcome, but they are not required to be “essential to overcome the vocational impediment.” This MRS rule appears to limit services in a manner prohibited by the federal regulations.

- The language in the MRS rule providing that services “must be provided at the least cost to meet the individual’s rehabilitation needs” is not required by the federal regulations. In the CAP’s experience, MRS personnel apply this language in a manner that is inconsistent with the purposes of the Rehabilitation Act.
 - This “least cost” language does not appear anywhere in the federal regulations governing the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, and it does not appear in the federal regulations concerning Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200.

- The CAP’s experience is that MRS personnel focus on the words “least cost” in this policy and give insufficient consideration to the quality of the services provided by the “least cost” option or whether the “least cost” service will actually meet the individual’s specific vocational rehabilitation needs.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contain a section, “Reasonable costs,” 2 C.F.R. § 200.404, that would provide a more appropriate rule.

MRS’s Proposed Amended Rule:

R 395.54 General requirements

Rule 4. (1) MRS shall not discriminate on the basis of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs, ~~or~~ disability, **participant status, or certain non-citizens as defined by section 188 of the workforce innovation and opportunity act, 29 USC 3248.**

CAP Comments:

- Much of this language appears to be derived from 29 U.S.C. section 3248. Absent any further explanation, it is difficult to know what the added term “participant status” means. Within the U.S. Code (as cited by MRS in the proposed amendment), it appears to refer to discrimination against individuals who are participants in programs or activities that receive funds under the Workforce Innovation and Opportunity Act because of the individual’s status as a participant.
- The grammar of this sentence is also confusing because it is constructed to read as follows: “MRS shall not discriminate on the basis of ... certain non-citizens as defined by section 188 of the workforce innovation and opportunity act, 29 USC 3248.”

MRS’s Proposed Amended Rule:

R 395.54 General requirements

(2) MRS shall not impose a duration of residence requirement as part of determining an individual’s eligibility for vocational rehabilitation services or that excludes ~~from services under the IPE~~ any individual who is legally present in this state **from services under the IPE.**

CAP Comments:

- MRS is proposing amendments to R 395.54 subsection (2), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The federal regulations provide that MRS must not impose, as part of determining eligibility, a duration of residence requirement that excludes from services any applicant who is present in the state. 34 C.F.R. § 361.42(c)(1).
- This MRS rule is incoherent when considered in comparison to the federal regulations, and MRS's proposed revision does not address the problem. The main issue is that an individual does not develop an individualized plan for employment until **after** MRS has determined that the individual is eligible for services. MRS must provide services to eligible individuals, and MRS cannot impose a duration of residency requirement as part of its eligibility determinations. Since an IPE does not exist until after the eligibility determination, it does not make sense to talk about a duration of residence requirement excluding an individual "from services under the IPE."
- The CAP's proposed language more closely tracks the federal regulations.

MRS's Rule:

R 395.54 General requirements

(6) Individuals are served in geographic MRS districts and offices according to their residence. Individuals who change their permanent residence may have the option to have their cases transferred, with supervisory approval, to the district or office to which they have moved.

CAP Comments:

- MRS is not proposing any amendments to R 395.54 subsection (6), but the current MRS definition is not aligned with the federal regulations.
- As noted above, and as recognized in the MRS rules, MRS may not impose a duration of residency requirement. 34 C.F.R. § 361.42(c)(1).
- Furthermore, under the federal regulations, MRS may not require an 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. 34 C.F.R. § 361.42(c)(1).
- Given these regulations, it is inconsistent with the federal regulations for the MRS rules to refer to any determinations concerning an individual's "permanent" residence, because this amounts to a de facto duration of residence requirement.

MRS's Proposed Amended Rule:

R 395.54 General requirements

(8) Case service expenditures, whether assessment or IPE services, require written authorization by MRS ~~prior to~~ **before** or simultaneously with the initiation of the service. Retroactive authorizations are prohibited.

CAP Comments:

- The language in the MRS rule providing that “retroactive authorizations are prohibited” is not required by the federal regulations. In the CAP’s experience, MRS applies this rule in a manner that is inconsistent with the purposes of the Rehabilitation Act
- This “retroactive authorizations are prohibited” language does not appear anywhere in the federal regulations governing the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, and it does not appear in the federal regulations concerning Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200.
- In the CAP’s experience, an MRS policy that strictly prohibits retroactive authorizations can cause avoidable harm to MRS customers. The CAP has repeatedly seen situations where timely authorizations were not made for services that were expressly contemplated in the IPE due to delays outside of the eligible individual’s control – including situations where MRS personnel were involved in the delays. MRS managers then take the position that this retroactive authorization rule prohibits taking any action to pay for the needed services.
- In order to address this reoccurring problem, MRS policy should include provisions that allow for exceptions to this rule where the service is contained in the individual’s IPE and where the individual made reasonable efforts to ensure MRS was able to make a timely authorization.
- In addition, under the federal regulations, MRS is required to establish policies related to the timely authorization of services, 34 C.F.R. § 361.50(e), but the MRS Administrative Rules do not contain any such policies.

MRS's Proposed Amended Rule:

R 395.54 General requirements

(9) Goods and services **must shall** be provided subject to the statewide availability of funds. Goods and services **must shall** be explored by the individual, with assistance from the MRS counselor, and the individual may be involved in the choice of who will provide goods and services.

CAP Comments:

- MRS is proposing amendments to R 395.54 subsection (9), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- It is unclear what is meant by “goods and services must be explored by the individual.” There is no comparable rule in the federal regulations.
- The federal regulations provide that MRS must ensure that the IPE is developed and implemented in a manner that gives the individual the opportunity to exercise informed choice in selecting the specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided, and the entity or entities that will provide the vocational rehabilitation services. 34 C.F.R. § 361.45(d)(2).
- It is possible to read this MRS rule as allowing that someone (a counselor?) could decide to not involve the individual in the choice of who will provide the goods and services. (The individual “may” be involved in the choice of who will provide the goods and services – under this language, who decides whether the individual will be involved?)
- The federal regulations provide that MRS must inform eligible individuals that they have the option of developing all or part of their IPE without assistance from MRS. 34 C.F.R. § 361.45(c)(1)(i).
- This MRS rule implies that an individual may only explore goods and services (and the choice of providers) with assistance from an MRS counselor.
- The language that the CAP is proposing, which comes directly from the federal regulations, 34 C.F.R. § 361.45(d)(2), does not appear anywhere else in the MRS Administrative Rules.

MRS's Proposed Amended Rule:

R 395.54 General requirements

(11) The MRS counselor shall inform each individual of the procedure for requesting a review or redetermination of an agency decision with which ~~he or she~~ **the individual** disagrees, including how the individual may request a hearing and the availability of CAP.

CAP Comments:

- MRS is proposing amendments to R 395.54 subsection (11), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- The language that the CAP is proposing more closely tracks the language of the federal regulations. 34 C.F.R. § 361.57(b). For example, the federal regulations do not use the word “redetermination” in this context, and the word only appears one other time in the MRS Administrative Rules. Instead, both the Rehabilitation Act and the federal regulations provide for an individual’s right to review of determinations by the vocational rehabilitation agency.
- The MRS rule does not mention the individual’s right to pursue mediation.
- The MRS rule only requires the counselor to inform the individual about the “availability” of the CAP, but the rule does not use the language of the federal regulations that requires MRS to specify how the CAP can assist the individual. 34 C.F.R. § 361.57(b)(1)(v).
- The MRS Administrative Rules contain sections that provide greater detail about the review of MRS determinations, and this rule should include a cross reference to those rules, as in the revisions proposed by the CAP.

MRS's Proposed Amended Rule:

R 395.76 Rates of payment

Rule 26. (1) ~~The maximum rate of payment for services shall be the usual, customary and reasonable rate charged for the service not to exceed the rate charged by other public agencies.~~ **MRS shall maintain a fee schedule for select vocational rehabilitation services. The fee schedule is a complete list of established rates of payment used to authorize and pay for specified services.**

CAP Comments:

- It is unclear from MRS's proposed rule whether MRS intends to implement any such fee schedule through a formal rule-making process, and it is the CAP's view that under Michigan law, MRS must implement any such fee schedule through a formal rule-making process. The federal regulations provide that MRS must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services. 34 C.F.R. § 361.50(c)(1). While the federal regulations give MRS the discretion to establish a fee schedule, the fee schedule itself would be a policy of general applicability that would prescribe the procedure and practice of MRS. *Spear v. Michigan Rehabilitation Services*, 202 Mich. App. 1, 4 (1993) (holding that while MRS had the discretion to employ a needs test, the needs test itself was an agency policy of general applicability that required promulgation as a rule).
- Moreover, the federal regulations require MRS to conduct public meetings prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services to provide the public an opportunity to comment on the policies or procedures. 34 C.F.R. § 361.20(a)(1). Any such fee schedule would be a substantive policy or procedure governing the provision of vocational rehabilitation services that would require public meetings.

MRS's Proposed Amended Rule:

R 395.76 Rates of payment

(2) MRS shall only authorize payment for vocational rehabilitation services included in the fee schedule at the rate of payment specified in the fee schedule, unless there is an established exception process that allows for rates of payment that deviate from the fee schedule.

CAP Comments:

- MRS is proposing amending R 395.54 to add subsection (2), but the proposed rule conflicts with the federal regulations.
- The federal regulations provide that the vocational rehabilitation agency may establish a fee schedule if the schedule is not so low as to effectively deny an individual a necessary service and if the fee schedule is not absolute and permits exceptions so that individual needs can be addressed. 34 C.F.R. § 361.50(c)(2).
- MRS's proposed rule states that MRS shall only authorize payment at the rate of payment in the fee schedule unless there is an established exception process that allows for rates of payment that deviate from the fee schedule. This rule reads such that MRS could determine for an individual case that there is no "established exception process," and so MRS would then only authorize the amount in the fee schedule. But the federal

regulations prohibit strict adherence to the fee schedule if individual needs are not being addressed.

- In addition, MRS must implement any such “established exception process” through a formal rule-making process and conduct public meetings regarding any such process for the reasons set forth above.

MRS’s Proposed Amended Rule:

R 395.76 Rates of payment

~~(2) The service that will meet the individual’s vocational rehabilitation need at~~ **(3) MRS shall authorize for services not listed on the fee schedule at the least cost to MRS shall be the service purchased that will meet the individual’s vocational rehabilitation need.**

CAP Comments:

- As noted earlier in these comments, the language in the MRS rule providing that MRS shall authorize services “at the least cost to MRS that will meet the individual’s rehabilitation need” is not required by the federal regulations. In the CAP’s experience, MRS personnel apply this language in a manner that is inconsistent with the purposes of the Rehabilitation Act.
 - o This “least cost” language does not appear anywhere in the federal regulations governing the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, and it does not appear in the federal regulations concerning Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200.
 - o The CAP’s experience is that MRS personnel focus on the words “least cost” in this policy and give insufficient consideration to the quality of the services provided by the “least cost” option or whether the “least cost” service will actually meet the individual’s specific vocational rehabilitation needs.
 - o The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contain a section, “Reasonable costs,” 2 C.F.R. § 200.404, that would provide a more appropriate rule.

MRS's Proposed Amended Rules:

R 395.79 Rehabilitated case closure.

Rule 29. An individual is determined to have achieved an employment outcome only if all the following requirements are met:

- (a) The employment outcome is in an integrated setting.
- (b) Substantial services under an IPE are provided and have contributed to the employment outcome.
- (c) The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (d) Employment reflects the employment outcome described in the IPE or IPE amendment and has been maintained for at least 90 days.
- (e) The individual and MRS counselor consider the employment to be satisfactory and agree the individual is performing well on the job.
- ~~(f) At the time of closure there is an assessment of the need for post-employment services.~~

CAP Comments:

- MRS is proposing amendments to R 395.79, but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- Under the federal regulations, determining whether an individual has achieved an employment outcome depends on the definition of "employment outcome," the definition of "competitive integrated employment," and the content of the individual's IPE. The federal regulations do not condition achieving an employment outcome on all of the requirements listed in MRS R 395.79.
- Instead, the federal regulations include a section that addresses closing the record of an individual who has achieved an employment outcome. 34 C.F.R. § 361.56. The CAP's proposed revisions would align MRS R 395.79 more closely with this federal regulation.
- The federal regulation does not require "substantial services under an IPE are provided and have contributed to the employment outcome." In fact, an individual could achieve an employment outcome without MRS providing "substantial services," and the CAP expects that MRS would close such a case as having achieved the employment outcome, so it is not clear why subsection (b) is included here.
- The federal regulations require that a record may only be closed if the individual has maintained the employment for an "appropriate period of time" necessary to ensure the stability of the employment outcome, 34 C.F.R. § 361.56(b), and this period cannot be less than 90 days. MRS R 395.79 only requires that the employment outcome is maintained for at least 90 days – the MRS rule is weaker than the one required by the federal regulations.
- In its proposed amendment, MRS has deleted its provision concerning assessment for post-employment services. The CAP presumes this is related to MRS's decision to

rescind the rules on post-employment services. However, as the federal regulations make clear, MRS is required to inform the individual who has achieved an employment outcome of the availability of post-employment services. 34 C.F.R. § 361.56(d). MRS should revise, not delete, the reference to post-employment services here.

MRS's Proposed Amended Rules:

R 395.83 Post-employment services (Rescinded)

CAP Comments:

- MRS is proposing rescinding R 395.83, but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.
- While the existing MRS Administrative Rules concerning post-employment services are flawed and should be rescinded, the federal regulations provide that an IPE must contain, as necessary, statements concerning an eligible individual's need for post-employment services.
- MRS's proposed amendments leave only one reference to post-employment services in the Administrative Rules, at R 395.71(h) ("Required components of IPE") ("As determined to be necessary, a statement of projected need for post-employment services.")
- Because there are no other references to "post-employment services" in the revised MRS Administrative Rules, a person reading the MRS Administrative Rules will not know what post-employment services are.
- One way to address this would be to add the definition of "Post-employment services" from the federal regulations, 34 C.F.R. § 361.46(c), to the MRS Administrative Rule definitions.
- An appropriate version of the definition would be: "Post-employment services means one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice." (This proposed definition is derived from 34 C.F.R. § 361.5(c)(41).)

Please contact John Sloat at jsloat@drmich.org or (800) 288-5923 if you have any questions or need further information regarding the CAP comments.

Sincerely,

Michelle Roberts
Executive Director

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

MICHIGAN REHABILITATION SERVICES

VOCATIONAL REHABILITATION

Filed with the secretary of state on

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

~~By authority conferred upon the director of the department of health and human services by 1964 PA 232 and Executive Reorganization Order Nos. 1993-11, 1999-1, 2003-1, 2012-10, and 2015-4, MCL 395.81, 408.40, and 445.2011 and in accord with the Rehabilitation Act Amendments of 1998, P.L. 105-220.~~

(By authority conferred on the director of the department of labor and economic opportunity by sections 2a and 2b of the proprietary schools act, 1943 PA 148, MCL 395.102a and 395.102b, and sections 3, 4, and 6 of the rehabilitation act of 1964, 1964 PA 232, MCL 395.83, 395.84, and 395.86; Executive Reorganization Order Nos. 1999-1, 2003-1, 2012-5, and 2019-3, MCL 408.40, 445.2011, 445.2033, and 125.1998; and in accord with the workforce innovation and opportunity act, Public Law 113-128)

R 395.51, R 395.53, R 395.54, R 395.76, and R 395.79 of the Michigan Administrative Code are amended, and R 395.83 is rescinded, as follows:

PART 1. ELIGIBILITY FOR REHABILITATION SERVICE

R 395.51 Definitions.

Rule 1. As used in these rules:

(a) "Clear and convincing evidence" means there is a high degree of certainty that the individual is incapable of benefiting from services in terms of an employment outcome.

(b) "Client Assistance Program" or "CAP" means the ~~mandated~~ program ~~authorized~~ required under the ~~Rehabilitation Act~~ of 1973, 29 ~~U.S.C.-U.S.C. USC~~ 73201 to 7961. As provided in the Rehabilitation Act, the CAP provides assistance in informing and advising all applicants and individuals eligible for vocational rehabilitation services of all available benefits under the Rehabilitation Act. Upon request of such applicants or eligible individuals, the CAP assists and advocates for such applicants or eligible individuals in their relationships with projects, programs, and services provided under the Rehabilitation Act, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under the

Rehabilitation Act and to facilitate access to the services funded under the Rehabilitation Act through individual and systemic advocacy. ~~—which provides individual and systemic advocacy services to all MRS applicants and eligible individuals including additional information, problem resolution assistance, and assistance with an appeal. The purpose of CAP is to advise and inform applicants and individuals eligible for services and benefits available under the rehabilitation act of 1973, 29 USC 701 to 7961, including students with disabilities under section 113 of the rehabilitation act of 1973, 29 USC 733, and individuals with disabilities employed at subminimum wage under section 511 of the rehabilitation act of 1973, 29 USC 794g. In addition, applicants and eligible individuals may be provided advocacy and representation to ensure their rights in their relationship with projects, programs, and services to protect their rights provided under the rehabilitation act of 1973, 29 USC 701 to 7961.~~

(c) “Competitive integrated employment” means work that complies with the following:

(i) Is performed on a full-time or part-time basis, including self-employment, and for which an individual is compensated at a rate that includes all of the following:

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the ~~Fair Labor Standards Act~~ **fair labor standards act** of 1938, 29 U.S.C. ~~U.S.C. 206(a)(1) 206~~ 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.

(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.

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

(ii) Is at a location where the employee with a disability interacts, for the purpose of performing the duties of the position, with other ~~individuals persons (persons, for example, other employees, 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. ~~—This requirement does not include 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 other individuals persons.~~

(iii) 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.

(d) “Comparable services and benefits” means services and benefits, not including awards and scholarships based on merit, that are provided or paid for, in whole, or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits that are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s IPE and that are commensurate to the services the individual would otherwise receive from ~~the designated state vocational rehabilitation agency~~ MRS.

(e) “Cost of attendance” means the total amount it will cost a student to attend school in a year.

(f) “Employment outcome” means with respect to an individual, entering, advancing in, or retaining full-time employment, or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting, or business ownership) in the integrated labor market, or supported-employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(g) ~~“Individualized plan for employment” or “IPE” means~~ an individualized plan for employment as described in R 395.67 to R 395.71 ~~a written document prepared on a form approved by MRS and developed to afford the individual meaningful opportunity to exercise informed choice in the selection of the following:~~

~~(i) Employment goal.~~

~~(ii) Specific vocational rehabilitation services required to achieve the employment goal.~~

~~(iii) Entities that will provide services.~~

~~(iv) Methods of service provision.~~

~~(h) “Job in jeopardy” means an individual who is in danger of being terminated from his or her the individual’s job due to disability related factors.~~

~~(hi)~~ (h) “Michigan Rehabilitation Services or “MRS” means the part of a network of vocational rehabilitation programs across the United States authorized by the federal rehabilitation act of 1973, 29 U.S.C. 701 to 796 ~~as amended, PL 105-220.~~

~~(ij)~~ (i) “Part-time employment” means employment that is permanently assigned to an employee that is less than 30 hours of work per week.

(j) “Post-employment services means one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(k) “Pre-employment transition services” or “Pre-ETS” means the required activities and authorized activities specified in 34 C.F.R. § 361.48(a)(2) and (3).

~~(k)~~ **(l)** “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.

~~(l) (m) “Seasonal employment” means employment as defined by the United States Department of Labor department of labor to be less than 5 months duration and is linked to seasonal or climatic conditions.~~

~~(m)~~ **(m)** “Substantial impediment to employment” means a physical or mental impairment, **considering attendant medical, psychological, vocational, educational, communication, and other related factors,** that ~~materially~~ hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual’s abilities and capabilities.

~~(n) (o) “Substantial services” means services that are provided in the context of a counseling relationship and the individual’s informed choice, and that make a significant contribution to the individual’s employment outcome. Substantial services may be provided directly, purchased, or arranged.~~

- ~~(o) (p) “Temporary employment” means employment for 180 days or less.~~
- ~~(p) (q) “Underemployment” means employment in which there is a significant discrepancy between the individual’s demonstrated abilities and capabilities and the demands of the current job.~~
- ~~(q) (r) “Unsteady employment” means employment that is seasonal, intermittent, temporary, permanently part time, or subjects the individual to a pattern of layoffs or variations in the availability of work.~~
- ~~(s) (ns) “Vocational rehabilitation services” or “VRS” means, if provided to an individual, those services available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Services provided shall **must** be published in the **MRS Rehabilitation Services Manual** policy and be made available to the public listed in 34 C.F.R. § 361.48, and, if provided for the benefit of groups of individuals, those services listed in 34 C.F.R. § 361.49.~~

R 395.53 Purpose.

Rule 3. (1) MRS shall ~~assist~~ **assess, plan, develop, and provide vocational rehabilitation services** for eligible individuals with ~~physical or mental~~ disabilities, **consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, ~~to so that they may~~ prepare for and engage in competitive integrated employment and achieve ~~an employment outcome~~ economic self-sufficiency.**

(2) **MRS shall make available Pre-ETS statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.**

(3) **MRS shall engage with employers to increase job opportunities for individuals with disabilities.**

~~(2) (4) The MRS process is based upon **on** an Individualized Plan for Employment (IPE) which ~~that~~ is oriented to an individual’s achievement of a vocational goal. Services provided must be essential to overcome the vocational impediment and must be provided at the least cost to meet the individual’s rehabilitation needs. MRS provides services in accordance with the provisions of an IPE. Each IPE must be designed to achieve a specific employment outcome that is selected by the customer consistent with the customer’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Each IPE must include a description of the specific vocational rehabilitation services needed to achieve the employment outcome.~~

R 395.54 General requirements.

Rule 4. (1) MRS shall not discriminate on the basis of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs, ~~or~~ disability, **participant status, or certain non-citizens as defined by section 188 of the workforce innovation and opportunity act, 29 U.S.C. 3248.**

(2) MRS shall not impose, as part of determining an individual’s eligibility for vocational rehabilitation services, a duration of residence requirement ~~as part of determining an~~

~~individual's eligibility for vocational rehabilitation services or that excludes from services under the IPE from services any applicant who is present in the state. any individual who is legally present in this state from services under the IPE.~~

(3) Throughout the individual's rehabilitation program, every opportunity ~~must shall~~ be provided to the individual to make informed choices regarding the rehabilitation process. MRS shall maintain documentation of opportunities for making informed choices **in** the individual's case record.

(4) MRS shall establish and maintain a case record for each individual and recipient of vocational rehabilitation services, which includes data necessary to comply with MRS and federal ~~rehabilitation services administration~~ **Rehabilitation Services Administration** requirements.

(5) MRS shall make administrative decisions about the district and office boundaries in which individuals are served. Individuals do not have a right to select the office or district in which they are served or the counselor who will serve them.

(6) Individuals are served in geographic MRS districts and offices according to their residence. Individuals who change their ~~permanent~~ residence may have the option to have their cases transferred, with supervisory approval, to the district or office to which they have moved.

(7) Individuals have the right to appeal the denial of a request to change counselors within an office.

(8) Case service expenditures, whether assessment or IPE services, require written authorization by MRS ~~prior to~~ **before** or simultaneously with the initiation of the service. Retroactive authorizations are prohibited.

(9) Goods and services ~~must shall~~ be provided subject to the statewide availability of funds. Each IPE must be developed and implemented in a manner that gives the individual the opportunity to exercise informed choice in selecting the specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided, and the entity or entities that will provide the vocational rehabilitation services. ~~Goods and services must shall be explored by the individual, with assistance from the MRS counselor, and the individual may be involved in the choice of who will provide goods and services.~~

(10) When appropriate, **the** MRS counselors shall provide the referral necessary to support **the** individuals with disabilities in securing needed services from other agencies and organizations.

(11) The MRS counselor shall ~~inform each individual provide applicants and eligible individuals notice~~ of the ~~procedure for requesting a right to obtain~~ review ~~or redetermination of an agency decision with which he or she~~ **the individual** ~~disagrees of determinations made by MRS that affect the provision of vocational rehabilitation services, as described in R 395.84 to R 395.88, including the right to pursue mediation as described in R 395.87, including how the individual may request a hearing and MRS counselors shall provide applicants and eligible individuals with notice of~~ the availability of CAP ~~to assist the applicant or recipient during mediation sessions or impartial due process hearings.~~

R 395.76 Rates of payment.

Rule 26. (1) ~~The maximum rate of payment for services shall be the usual, customary and reasonable rate charged for the service not to exceed the rate charged by other public agencies. MRS shall maintain a fee schedule for select vocational rehabilitation services. The fee schedule is a complete list of established rates of payment used to authorize and pay for specified services.~~

~~(2) MRS shall only authorize payment for vocational rehabilitation services included in the fee schedule at the rate of payment specified in the fee schedule, unless there is an established exception process that allows for rates of payment that deviate from the fee schedule. The MRS fee schedule for vocational rehabilitation services is not absolute and MRS shall permit exceptions to the fee schedule so that individual needs can be addressed. The MRS fee schedule for vocational rehabilitation services shall not be so low as to effectively deny an individual a necessary service.~~

~~(2) The service that will meet the individual's vocational rehabilitation need at~~ (3) **MRS shall authorize for services not listed on the fee schedule at the least cost to MRS shall be the service purchased that will meet the individual's vocational rehabilitation need.**

~~(3) (4) MRS shall not place an absolute and arbitrary dollar limit on specific service categories or on the total services provided to the an individual.~~

~~(4) (5) MRS is not responsible for the cost of out-of-state services in excess of the cost of in-state services if either service would meet the individual's vocational rehabilitation needs.~~

R 395.79 ~~Rehabilitated case closure~~ Requirements for closing the record of services of an individual who has achieved an employment outcome.

Rule 29. ~~The record of services of A~~ an individual is determined to have who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) ~~The employment outcome is in an integrated setting~~ The individual has achieved the employment outcome that is described in the individual's IPE.

(b) ~~Substantial services under an IPE are provided and have contributed to the employment outcome.~~

~~(c) The employment outcome is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.~~

~~(d) Employment reflects~~ The individual has maintained the employment outcome described in the IPE or IPE amendment and has been maintained for at least 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.

~~(e) The individual and MRS counselor consider the employment outcome to be satisfactory and agree the individual is performing well i~~ on the job employment.

~~(f) The individual is informed through appropriate modes of communication of the availability of post-employment services.~~

~~(g) At the time of closure there is an assessment of the need for post-employment services.~~

R 395.83 Rescinded.

~~Rule 33. (1) The MRS counselor shall conduct an assessment of the need for post-employment services prior to rehabilitated closure. An individual whose case have been closed rehabilitated shall be provided additional services if necessary to maintain, regain, or advance in his or her current employment.~~

~~—(2) The need for post-employment services may arise either from an unexpected situation or be planned as part of the IPE or at case closure. An individual shall be encouraged to stay in touch with his or her MRS counselor following case closure to seek assistance if problems arise and employment is in jeopardy.~~

~~—(3) Post-employment services are provided as an amendment to the IPE and generally are provided within approximately 12 months of case closure. In determining whether it is appropriate to provide a needed service in post-employment status, the MRS counselor shall determine whether the service or services are related to the original IPE and, therefore, is an appropriate amendment to it.~~

~~—(4) Post-employment services shall be used to assist an individual in maintaining employment when a job is in jeopardy, or to regain employment when a new placement is needed due to job loss.~~

~~—(5) The MRS counselor may provide services in post-employment status to assist an individual in advancing in his or her present career if extended training is not involved, and if the MRS counselor determines that the current job is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. Objective, performance based data shall be obtained to assist the MRS counselor and individual in making this determination.~~

~~—(6) The MRS counselor shall record in the case record changes in the individual's work situation such as employer name, wages, or hours worked.~~