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Reframing Eligibility – Everyone is Eligible

DARS Training Day

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Presenters



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Objectives

After participating in this session participants should be able to:

- Understand what paradox is and what role it may play in shaping both/and mental models and bias.
- Explain where and how paradox shows up within Vocational Rehabilitation services and its potential impact
- Describe the purpose of Vocational Rehabilitation Services.
- Understand and recognize the importance of competitive integrated employment for individuals with disabilities.
- Apply critical reflection strategies to surface and address biases when reviewing applications for individuals with complex support needs or other marginalized and underserved populations.
- Evaluate case studies that assist with challenging the paradox of eligibility determination in order to address biases and mental models around individuals with complex support needs.

Agenda

- Introduction to Paradox and Understanding Paradoxical Influence
- The purpose of Vocational Rehabilitation and Review of VR Regulations and Policy – Paradox in Process
- Practical Application – Case Scenarios

Introduction to Paradox and Understanding Paradoxical Influence

What is a Paradox?

“a situation, person, or thing that combines contradictory features or qualities.”

(Oxford Dictionary, 2023)

“Contradictory, yet interrelated elements (dualities) that exist simultaneously and persist over time; such elements seem logical when considered in isolation, but irrational, inconsistent, and absurd when juxtaposed” (Smith & Lewis, 2011, p.387)



Everyday Examples of Common Paradoxes

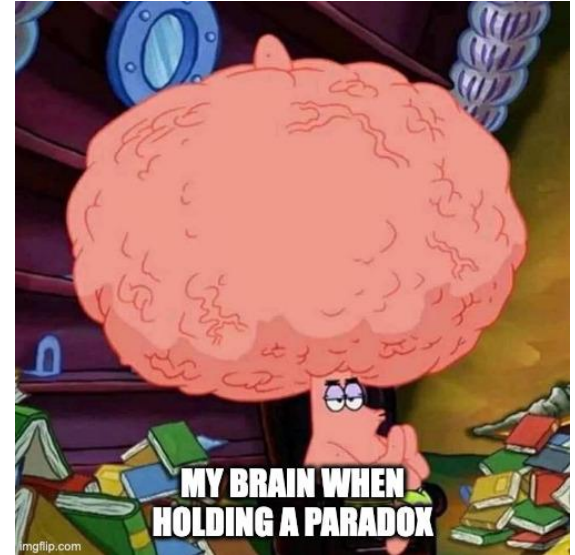
- The only constant is change
- Less is more.
- You have to spend money to make money
- Inaction is action.
- If there is an exception to every rule, then even that rule must have an exception
- If everything is possible, then it must be possible for something to be impossible.



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Paradox and the Human Brain

- Holding two contradicting truths (a paradox) simultaneously is extremely difficult for most people.
- The cognitive shortcuts our brains enact, like categorizing, creating associations, and filling in the blanks based on our mental models, contribute to this difficulty and often lead us to place more emphasis on one truth in a paradox than the other.
- In other words, how the brain processes and deals with a paradox is very susceptible to the influence of both/and bias/mental models.



Paradoxical Influence in Human Services

- Program participation - Instability and Stability
- Disability Benefit Programs (SSI/SSDI) – if you work you are not disabled enough, once eligible you can go to work (use this Ticket or call VR).



The Purpose of Vocational Rehabilitation, VR Regulations & Policy: Paradox in Process

What is the Purpose of Vocational Rehabilitation?

The purpose of Vocational Rehabilitation is _____.



Code of Federal Regulations - § 361.1 Purpose

State Vocational Rehabilitation Services Program

Under the State Vocational Rehabilitation Services Program, the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation programs, each of which is—

- (a) An integral part of a statewide workforce development system; and
- (b) Designed to **assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities**, consistent with **their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice** so that they may **prepare for and engage in competitive integrated employment and achieve economic self-sufficiency**.

Reminder: Importance of CIE for Individuals with Disabilities

“Integrated vocational services models that directly promote CIE such as supported and customized employment were found to lead to substantially improved outcomes across many key domains” (Taylor et al., 2023, p. 73).

- Higher wages
- Higher quality of life
- Higher levels of self-esteem and job satisfaction
- Increase self-determination

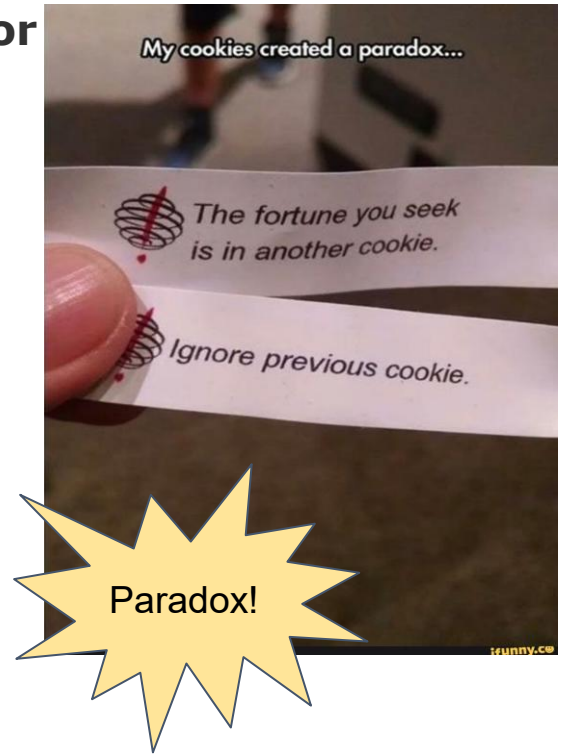
[The Efficacy of Competitive Integrated Employment Versus Segregated Employment for Persons with Disabilities: A Systematic Review](#)

Code of Federal Regulations - § 361.42 Assessment for determining eligibility and priority for services

(a) *Eligibility requirements* -

(1) **Basic requirements.** The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

- (i) A determination by qualified personnel that the applicant **has a physical or mental impairment**;
- (ii) A determination by qualified personnel that **the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment** for the applicant; and
- (iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that **the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice.** For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.



Code of Federal Regulations - § 361.42 Assessment for determining eligibility and priority for services (2)

(2) *Presumption of benefit.* The designated State unit **must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome.**

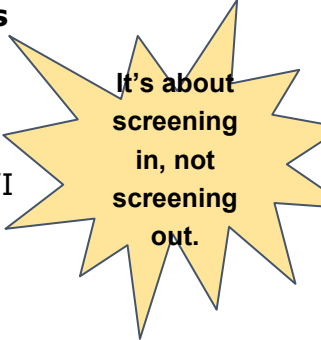
(3) *Presumption of eligibility for Social Security recipients and beneficiaries.*

(i) Any applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act is -

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(c)(29).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).



It's about
screening
in, not
screening
out.

Code of Federal Regulations - § 361.42 Assessment for determining eligibility and priority for services (3)

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

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The **applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome**, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

Eligibility Determination - DARS Policy

An individual eligible for the Vocational Rehabilitation Program when all six (6) of the following federal criteria (per 2016 [Federal Regulation 34 CFR § 361.42](#)) are met. The eligibility requirements shall be applied without regard to the age, gender, race, color, creed, or national origin of the applicant (per 2016 [Federal Regulation 34 CFR § 361.42](#)). The eligibility requirements shall be applied without regard to the income level of an applicant or applicant's family (per 2016 federal regulation and [Chapter 14.3, FINANCIAL, Policy 1](#)).

1. U.S. citizen, or a non-U.S. citizen who has provided documentation of legal eligibility to work in the U.S. (per federal regulation 8 CFR). For documentation requirements for non-U.S. citizens, including those served by public school without a work permit. See [Chapter 2.1, APPLICATION, Policy 1, Section A2](#).
2. A physical or mental disability (see [Chapter 3, DISABILITY, Policy 1, Section A1](#)) documented by a qualified professional (for qualified professional [see Policy 2](#) of this chapter.) No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability (e.g., HIV positive) (per 2016 [Federal Regulation 34 CFR § 361.42](#)). The individual is ineligible if no physical or mental impairment exists, such as an acute condition with no residual impairment. Some examples of ineligibility include, but are not limited to when only an acute (i.e., broken bone) rather than a chronic condition is observed; when a chronic condition appears to have no or inconsequential effects in a medical sense, etc..

Eligibility Determination - DARS Policy (2)

3. The physical or mental impairment constitutes or results in a substantial impediment to employment. Currently employed individuals may qualify for vocational rehabilitation services for the purposes of retaining or advancing in employment. Documentation of serious functional limitation (For SFLs, see Chapter 3, DISABILITY, Policy 1, Section C.) that is a substantial impediment to employment may rely solely on information from the applicant and others, and counselor observations. An individual with substantial impediment to employment that is not created by a disability is not eligible for the Vocational Rehabilitation Program. An individual with a disability that does not create a substantial impediment to employment is not eligible for the Vocational Rehabilitation Program. Some examples of ineligibility include, but are not limited to, individual is employed on a regular basis in a position more or less in keeping with his or her capabilities; individual is unemployed but the physical or mental condition is so minor that it is not the reason for the unemployment, etc.
4. Presumption of employability. [The VR counselor shall presume an individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless the VR counselor can demonstrate, based on clear and convincing evidence, that the disability is too significant for the individual to achieve any employment outcome with VR services.](#) Some examples of ineligibility include, but are not limited to, disability is so severely limiting that there is little chance the individual can achieve an employment outcome; disability is rapidly progressive or terminal (per federal policy directive RSA-PD-03-07 instructions for RSA-911 Report issued September 25, 2003).

For case closure before Eligible status because the disability is too severe for employment, trial work experiences plan is required (see Chapter 4.02, TRIAL WORK, Policy 1).

For cases in Eligible status and beyond, trial work experiences are not required to justify closure due to severity of disability (per federal policy directive RSA-PD-03-07 instructions for RSA-911 Report issued September 25, 2003).

Eligibility Determination - DARS Policy (3)

5. Individual is present in Virginia. Present in Virginia means living (including living at a Virginia school) or working in Virginia. No duration of residence requirement shall be imposed (per 2016 Federal Regulation 34 CFR § 361.42(c)). The VR agency is not obligated to continue Employment Plan services or written plan for trial work approved by another VR agency. If the Employment Plan approved by the VR agency of another state specifically provides for relocation to Virginia, the individual should continue to be served by the other state rather than by Virginia. If an employment outcome requires VR services from both Virginia and another VR agency, the DRS VR counselor should obtain a signed release to contact the counselor in that agency to discuss mutually serving the individual and to request a copy of pertinent case materials. See Chapter 11, CLOSURE, Policy 1, Section A1 for case closure in multiple states during the same federal fiscal year.

6. The DRS VR counselor determines that VR services are required to prepare for, secure, retain, regain, or advance in employment of client informed choice consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, and interests. The eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of the services required by an applicant. A decision regarding the vocational readiness of a high school student shall be made by the DRS counselor in consultation with the student, the custodial parent/guardian, and any other relevant parties including, as appropriate, school personnel, and shall not be made based solely on age.

Eligibility: Presumption of Employability

Presumption of employability. The VR counselor shall presume an individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless the VR counselor can demonstrate, based on **clear and convincing evidence**, that the disability is too significant for the individual to achieve any employment outcome with VR services.

(DRS Policy and Procedure Manual)

How is presumption of employability paradoxical to what a VR Counselor is asked to do to determine eligibility?

HINT: Eligibility is based on the medical model of disability

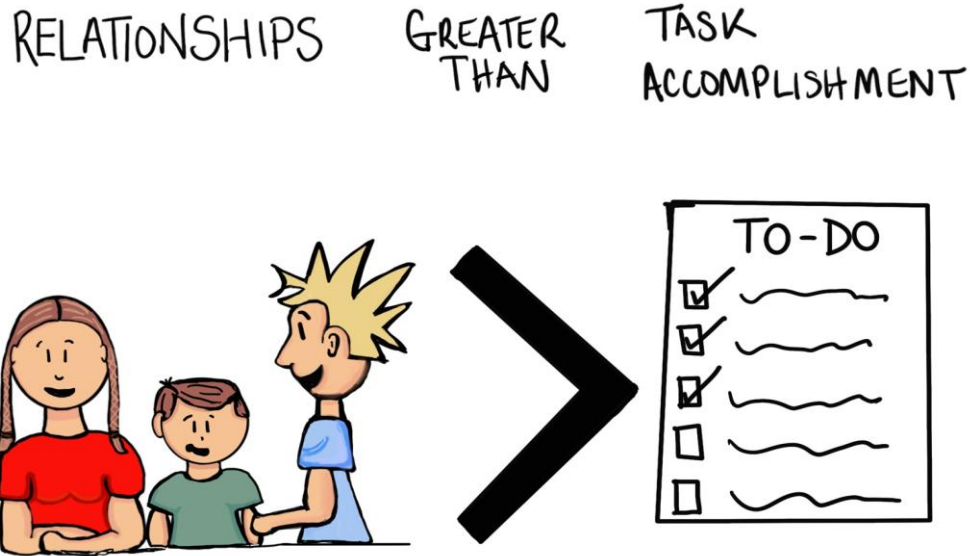
Plan Development & Service Provision

The Individualized Plan for Employment (IPE) should consist of an employment goal that is person-centered, strength-based, and considers the participant's preferences, interests, and abilities, as well as the needed services, providers, supports, timeline, costs and progress measures.

How is the process of plan development and service provision different from the eligibility process?

How might the process of determining eligibility introduce bias?

What Can VR Counselors Do?

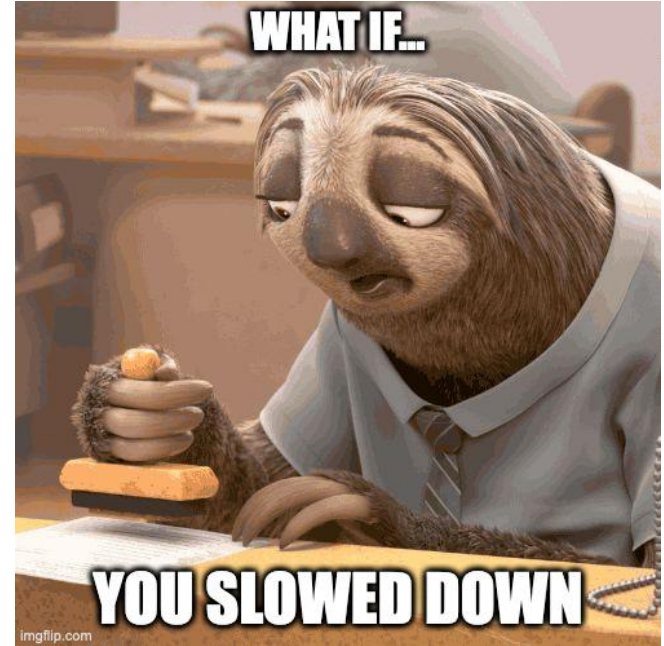


- Recognize that sometimes bias (i.e., confirmation, conformity, expediency, halo/horns, heuristics) can impact how we see participants.
- Emphasize therapeutic alliance - prioritize counselor-participant relationship first and task accomplishment will come

Schein, E. (2013). *Humble Inquiry: The gentle art of asking instead of telling*. Barret-Koehler Publishers, Inc.

What Can VR Counselors Do (2)?

- Slow Down
 - Bias is more likely to creep in when we are forced to make quick decisions.
- Consciously engage in critical self-reflection related to your participant's case – Ask Yourself:
 - What and who are controlling the narrative in this situation?
 - What do you know about the participant you are working with? How do you know that? Why is that knowledge valid? Are there other sources of knowledge that should be considered?
 - How is success being defined? Who is defining it?
 - Why is one course of action recommended and not another? Who benefits most from the course of action recommended?



Reminder: Ongoing Critical Reflection is an Ethical Responsibility



Keys to engaging in critical reflection:

- Create a reflective space
- Set aside time
- Review your experiences
- Identify patterns
- Consider alternative perspectives
- Set goals for growth
- Seek support

Stella Young Ted Talk

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Practical Application: Case Scenarios

Case Example 1 - Participant EJ

EJ is an 18-year-old, non-binary (pronouns they/them), biracial, and recent high school graduate. Throughout high school, EJ received special education services and had an IEP for an Autism Spectrum Diagnosis and received accommodations to support their social/interpersonal skills as well as support for comorbid Attention Deficit Hyperactivity Disorder and Generalized Anxiety. While in school, EJ received accommodations in the form of extended time on tests/assignments, assistance with time management, and occasionally used a scribe to assist with note-taking. EJ notes that their favorite class in school was Math and wants to work in Artificial Intelligence because “it seems cool.” For the past two years, EJ has been involved with the community volunteering at a local animal shelter. Prior to volunteering, EJ worked for a local pizza restaurant; however, they were let go due to customer complaints of inappropriate interactions.

Case Example 2 - Participant TE

TE is a 21-year-old Middle Eastern, transgender man (he/him) and a recent high school graduate. He completed high school with a modified diploma and received special education services and IEP accommodations for Autism Spectrum Disorder. He has been working with his VR counselor for the past few years - he started receiving Pre-Employment Transition Services at 16 and recently applied for VR services. Initially, his VR counselor placed him in trial work as they were unsure if TE would benefit from employment-related services to obtain and maintain competitive integrated employment. TE is unsure of his employment goal and explains that he wants to work because his parents want him to, and he wants to make them proud - through his school experiences, he has completed tasks related to stocking and cleaning. For his situational assessments, the employment specialist noted that TE could follow directions and did well with repetitive tasks. The VR counselor moved TE into eligible status and work with him to develop an employment goal - the employment specialist was able to find a position that consisted of repetitive tasks and fit many of TE's needs; he would work on a housekeeping crew in a hotel. After three weeks of working, TE was let go because of several incidents when working with the crew (e.g., bathroom accidents, inappropriate interactions with customers, poor work quality). TE was disappointed, and his parents were furious that he lost his job and complained to the VR counselor that TE needed more support when working. Feedback from the employer expressed concern regarding TE's ability to work in the future.

Case Example 3 - Participant JS

JS is a 31-year-old, heterosexual, cisgender, caucasian, male seeking employment. He graduated high school with a modified diploma, and received IEP services for an Intellectual Disability (IQ=60). Throughout high school, he received accommodations to include assistance with assignments (scribe), read-aloud, and extra time on assignments. JS was receiving VR transition services and with the support of his VR Counselor and the school, JS participated in a paid work-based learning experience at McDonald's and after exiting high school, he was offered a part-time job. JS accepted the position although he did not want to work in food service. Six months later he quit his job and has been working in a sheltered environment since.

Case Example 4 - Participant AS

AS is a 19-year-old, 2nd generation Asian American, asexual, female seeking VR services to pursue her dream of becoming an astronaut. She arrived at the local VR office asking for assistance completing an application, her grandmother accompanied her to the office. Based on the intake form AS completed high school with a modified diploma and received special education services for Multiple Disabilities - she elected to not continue with extended education because she didn't like school. While in high school she completed a Life Skills course where she was able to learn independent living and employment skills. The grandmother mentioned that AS had difficulty completing the employment tasks that were asked of her because she has a difficult time verbally communicating.

Case Example Discussion Questions

- What do you know about the participant you are working with?
- How do you know that?
- Why is that knowledge valid?
- Are there other sources of knowledge that should be considered?
- What information is missing or what information would be helpful?
 - Where would you find this information? How would it help determine next steps?

References

Smith, W. K. & Lewis, M. W. (2011). Toward a theory of paradox: A dynamic equilibrium model of organizing. *Academy of Management Review*, 36(2), 381-403.

Taylor, J. P., Avellone, L., Wehman, P., & Brooke, V. The efficacy of competitive integrated employment versus segregated employment for persons with disabilities: A systematic review. *Journal of Vocational Rehabilitation*, (Preprint), 1-16.

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