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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
TECHNICAL ASSISTANCE & CONTINUING EDUCATION
CENTERS
AMERICAN INDIAN VOCATIONAL REHABILITATION
SERVICES PROJECTS
CONSUMER ADVOCACY ORGANIZATIONS

SUBJECT: Federal Requirements Governing the Composition and
Membership of, and Appointments to, the State Rehabilitation
Councils

PURPOSE: *The Rehabilitation Act of 1973, as amended (Rehabilitation Act)*
requires the State Plan for the vocational rehabilitation (VR)
program to assure that either the designated state agency is an
independent commission that is consumer-controlled or that the
state has established a State Rehabilitation Council (SRC) that
meets the requirements set forth in Section 105 of the
Rehabilitation Act (Section 101(a)(21)).

Except for those states in which the designated state agency is an
independent commission established pursuant to Section
101(a)(21)(A)(i) of the *Rehabilitation Act*, a state must establish an
SRC so that it can receive funding for the administration and
operation of the VR program (Section 105(a)(1)). Among its
several responsibilities, the SRC reviews, evaluates and advises the
agency regarding its performance and effectiveness in the delivery
of services and the affect of service provision on the achievement
of employment outcomes by individuals with disabilities (Section
105(c)(1) of the *Rehabilitation Act*). Additionally, the SRC
ensures that the voice of the community of stakeholders is heard as
agencies develop and implement policies and procedures that

directly impact the individuals served by the VR agency (Sections 101(a)(16) and 105(c)(2) and (6) of the *Rehabilitation Act*).¹

When constituted in accordance with federal requirements, the SRC brings together a variety of individuals with disabilities, disability groups, VR professionals, service providers and leaders in the community, including those representing business, industry and labor. To ensure that each SRC is properly constituted so that it is able to carry out its mandated functions, the Rehabilitation Services Administration (RSA) provides, through this technical assistance circular (TAC), guidance to VR agencies and SRCs regarding the federal requirements concerning the composition and membership of, and appointments to, the SRC.²

**TECHNICAL
ASSISTANCE:**

The information contained in this TAC is presented below in answer to a series of questions frequently asked by VR agencies and SRCs. Except where otherwise noted, all requirements discussed herein also apply to SRCs established in states with a separate VR agency serving individuals who are blind and visually impaired.

1. Who has the authority to appoint members to the SRC?

Except in a very limited number of states, the governor must select and appoint the members of the SRC (Section 105(b)(3) of the *Rehabilitation Act*; 34 CFR 361.17(a)). However, in those few states where the state's constitution or statutes vest authority to carry out activities under the *Rehabilitation Act* in another entity, including one or more houses of the legislature or an independent board, the chief officer of that entity has the authority to make the appointments to the SRC (*Id.*). For example, a state's constitution may establish an elected board of education that is structurally independent from the state's executive branch and from the control of the governor. In such circumstances, state statute may identify the elected board as the entity charged with the responsibility to carry out the activities under the *Rehabilitation Act*. In that case, the board's president, as its chief officer, has the authority to select and appoint the members of the SRC.

¹ A complete list of an SRC's mandated functions and responsibilities can be found at Section 105(c) of the *Rehabilitation Act* and its implementing regulations at 34 CFR 361.17(h).

² This TAC does not address federal requirements, found at Section 101(a)(21)(A)(i) of the *Rehabilitation Act* and 34 CFR 361.16(a)(1), pertaining to the composition and functions of an independent commission established for the purpose of overseeing and administering a state's VR program.

When making the appointments, the appointing authority must do so only after receiving recommendations from representatives of organizations representing a broad range of individuals with disabilities. To the greatest extent practicable, the appointing authority must take into account the extent to which minority populations are represented on the SRC (*Id.*). This requirement is consistent with changes to the *Rehabilitation Act* that emphasize outreach to individuals from minority backgrounds and the need for the VR program to better reflect the culturally diverse population of the United States (preamble to the Notice of Proposed Rulemaking (NPRM) 60 Fed. Reg. 64475, 64482-64483 (Dec. 15, 1995)).

2. Must the director of the designated state unit be a member of the SRC?

Regardless of whether the SRC is established pursuant to Section 105(b)(1)(A) or (B) of the *Rehabilitation Act*, the director of the designated state unit must be appointed to the SRC as an ex-officio, nonvoting member (Section 105(b)(2) of the *Rehabilitation Act* and 34 CFR 361.17(b)(i)(xii)). In those states where one SRC represents two designated state units – one for individuals who are blind and one for all other individuals with disabilities – both directors must be appointed to the SRC and serve in a nonvoting, ex-officio capacity.

3. What are the other composition and membership requirements for the SRC?

The membership requirements, set forth at Section 105(b) of the *Rehabilitation Act* and 34 CFR 361.17(b) ensure that various constituencies of the VR program have a voice in the conduct of the VR program in the state (Final Regulations, 66 Fed. Reg. 4379, 4422 (Jan. 17, 2001)). An SRC must be comprised of a minimum of 15 members (Section 105(b)(1)(A) and (B) of the *Rehabilitation Act* and 34 CFR 361.17(b)(1) and (3)). However, a separate SRC for agencies serving individuals who are blind and visually impaired may consist of fewer than 15 members, if state law establishing this lower minimum number of members was in effect on the day of enactment of the *Rehabilitation Act Amendments of 1992* (Section 105(b)(1)(C); 34 CFR 361.17(b)(4)).

A majority of SRC members must be individuals with disabilities who do not work for the VR agency (Section 105(b)(4)(A) of the *Rehabilitation Act*; 34 CFR 361.17(c)(1)). In those states that establish a separate SRC for the agency serving the blind, the

majority of that SRC must be comprised of individuals who are blind and do not work for either VR agency in the state (Section 105(b)(4)(B); 34 CFR 361.17(c)(2)).

In accordance with Section 105(b)(1)(A) of the *Rehabilitation Act* and regulations at 34 CFR 361.17(b)(1), states may appoint more than the minimum 15 members to the SRC, so long as the membership includes all of the representatives described below:

- at least one representative of the Statewide Independent Living Council (SILC) – who must be either the chairperson or another designee of the SILC;
- at least one representative of a parent training and information center established pursuant to Section 682(a) of the *Individuals with Disabilities Education Act (IDEA)*;
- at least one representative of the Client Assistance Program (CAP) who must be either the CAP director or another individual recommended by the CAP;
- at least one qualified VR counselor with knowledge of and experience with the VR programs. This individual serves as an ex-officio, nonvoting member if he or she is employed by the designated state agency;
- at least one representative of a community rehabilitation program;
- four representatives of business, industry and labor;
- representatives of disability advocacy groups: (a) representing a cross section of individuals with physical, cognitive, sensory and mental disabilities; and, (b) representing individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves.
- at least one former or current applicant for, or recipient of, VR services;
- at least one representative of the directors of the American Indian Vocational Rehabilitation grant program, if the state has such a project(s) carried out in the state;
- at least one representative of the state educational agency (SEA) responsible for the public education of students with disabilities; and
- at least one representative from the state workforce investment board.

Pursuant to Section 105(b)(1)(B) of the *Rehabilitation Act* and 34 CFR 361.17(b)(3)(i), states that have established a separate SRC for a VR agency serving individuals who are blind and visually impaired must satisfy all of the above membership requirements, with only a few exceptions permitted. In particular, instead of including representatives of a cross section of disability groups, the

SRC for a separate agency serving the blind and visually impaired, must include at least one individual who represents an advocacy group for the blind (34 CFR 361.17(b)(3)(ii)(A)). In addition, this SRC must include at least one representative of an individual who is blind, has multiple disabilities, and has difficulty representing him or herself due to his or her disabilities (34 CFR 361.17(c)(3)(ii)(B)).

RSA recommends that appointing officials, and those that advise them, make every effort to ensure, whenever practicable, that the SRC includes representation from more than one advocacy group in those states where there are more than one advocacy group representing individuals with disabilities, including more than one advocacy group representing individuals who are blind. In those states where there is one SRC representing both designated state units for the VR program, RSA encourages the appointing authority to appoint representatives from a cross section of disability groups that include those advocacy groups of the blind.

4. Can an entity be represented on the SRC by an individual who is not a member or employee of that entity?

With few exceptions, Section 105(b) of the *Rehabilitation Act* and 34 CFR 361.17(b)(1) require that “representatives” of specified organizations must be appointed to sit on the SRC. Neither the *Rehabilitation Act* nor its implementing regulations require that the representatives be employees or members of those organizations. Therefore, RSA has interpreted this to mean that those organizations may be represented by individuals who are not members or employees of those organizations (Final Regulations, 66 Fed. Reg. 4379, 4422 (Jan. 17, 2001)).

As noted elsewhere in this TAC, while the organizations and entities represented on the SRC must provide their recommendations of representatives, the final appointment decision vests in the governor or other appointing authority. Although RSA strongly encourages that the representatives be active members or employees of those organizations, RSA also recognizes that the appointing authority may appoint a nonmember or someone who is not employed by that organization. RSA recommends that careful consideration be given, prior to such a decision, to whether such an individual can truly represent the organization for which he or she is being appointed. If a nonmember or someone who is not employed by the organization is to be appointed, RSA expects that such a council member would be closely affiliated with and knowledgeable about the

organization or entity whose interests the individual is charged with representing (*Id.* At 4422-4423) so that the member can best carry out his or her responsibilities on the SRC.

5. Which SRC members may vote?

With limited exceptions, all members of the SRC have the right to vote on matters before the council. The first of the exceptions prohibits representatives who are employed by the VR agency or its designated state agency from voting on SRC matters (34 CFR 361.17(b)(2)). For example, the director of the designated state unit serves as an ex officio member and is not allowed to vote (Section 105(b)(2) of the *Rehabilitation Act*; 34 CFR 361.17(b)(1)(xii)). Similarly, the member who serves as a qualified VR counselor, if that individual works for the VR agency at the time he or she is appointed to the council, also serves as an ex-officio member and is not permitted to vote (Section 105(b)(1)(A)(iv); 34 CFR 361.17(b)(1)(iv)). However, if the CAP representative is from a CAP that is housed within the VR agency, that individual representative is not so restricted and, therefore, has the right to vote on matters before the SRC (34 CFR 361.17(b)(2)).

The second of the exceptions pertains to those matters before the council when a conflict of interest – or the appearance of a conflict of interest – exists, e.g., when the vote would result in a direct financial gain for that individual or the organization he or she represents. In such circumstances, individuals must not vote on such matters. Members also must not vote when there is an appearance of a conflict of interest under state law (Section 105(e) of the *Rehabilitation Act*; 34 CFR 361.17(g)). If there is a conflict of interest, or the appearance of a conflict of interest, the member must recuse him or herself from that particular vote, explaining to the council as necessary the reason for the recusal.

6. When an individual with a disability is appointed to represent an agency or entity on the SRC, does this count toward the majority representation of individuals with disabilities?

Yes, so long as the individual is not an employee of a state VR agency. As noted above, the SRC must be comprised of a majority of individuals with disabilities who are voting members (Section 105(b)(4); 34 CFR 361.17(c)). This requirement applies even if more than the minimum of 15 individuals are appointed to serve on the council.

7. Can one person represent more than one agency or stakeholder group on the SRC?

RSA has consistently stated that a member of the SRC can represent only one agency or organization on the council at a time (Final Regulations 66 Fed. Reg. 4379, 4423 (Jan. 17, 2001)). For example, an individual, who is a former or current applicant or client of VR services, may not also serve as a representative of a disability group, even though that individual may be affiliated with such a group. RSA recognizes that some states have difficulty maintaining a sufficient pool of qualified individuals to serve on statewide councils. Nevertheless, Section 105(b) of the *Rehabilitation Act* and 34 CFR 361.17(b) establish a minimum number of members for the council, each of whom represents a specific component of the disability community. Because each member represents a different interest, sometimes one that is divergent from that of other members, we maintain that each organizational requirement must be met separately (Final Regulations, 66 Fed. Reg. 4379, 4423 (Jan. 17, 2001)).

8. How is the chairperson of the SRC selected?

Every SRC must have a chairperson. The members of the SRC must select the chairperson from among the voting members of the SRC (Section 105(b)(5)(A) of the *Rehabilitation Act* and 34 CFR 361.17(d)(1)). This means that ex-officio members of the Council, such as the director of the designated state unit or qualified VR counselor employed by the designated state unit, cannot be selected to serve as the chairperson. The governor may veto the council's choice of chairperson if state law grants this authority to the governor (*Id.*). In states where the governor does not have a veto power, or in which another entity is granted the authority to make appointments to the SRC, that entity may select a chairperson, or require the SRC to select a chairperson (Section 105(b)(5)(B) of the *Rehabilitation Act*; 34 CFR 361.17(d)(2)). There is nothing in federal law to prohibit an SRC from selecting co-chairs.

Although not required, RSA strongly recommends that a chairperson of the SRC be an individual with a disability or, in the case of a SRC for agencies serving the blind, that the chairperson be blind. RSA also encourages SRC members to select a chairperson in accordance with the council's bylaws, and with attention to a number of factors, including availability of the individual to take on the responsibility of serving as chairperson, demonstrated leadership skills, and a minimum potential for

conflicts of interest that might result in frequent recusals from voting or actively participating in the work of the council.

9. How long can a member serve on the SRC?

Each SRC member shall be appointed to serve no more than two consecutive full three-year terms (Section 105(b)(6)(A) and (B); 34 CFR 361.17(e)(1)). This rule does not apply to the individuals representing the CAP or the AIVRS project (*Id.*). If a council member is appointed to replace a former member who did not complete his or her term, the new council member must be appointed for the remainder of the vacated term for which he or she is being appointed – not a full three-year term (Section 105(b)(6)(A)(i); 34 CFR 361.17(e)(2)). Once that initial term is completed, the individual may be appointed to fill a second term of three years (Section 105(b)(6)(A)(i) and (B); 34 CFR 361.17(e)(2)).

When an SRC was originally established, the length of the member's terms were to be staggered, so that the SRC remained fully constituted as the initial terms expired; however, no single term was to be longer than three years (Section 105(b)(6)(A)(ii); 34 CFR 361.17(e)(3)). This staggered approach to the setting of the length of a member's term also can be used in the rare instance when the SRC must be re-established after the terms of all members have lapsed.

10. Can a member of the SRC continue to serve on the council once his or her term has expired?

It has come to RSA's attention that some states have enacted statutes or regulations, or have adopted policies, permitting a member of an advisory council in general, or the SRC specifically, to continue in his or her role on the council after the term of membership, set by federal law, has expired, until the governor reappoints the individual or appoints another person to replace that member. Whether these statutes, regulations or policies are consistent with the provisions of the *Rehabilitation Act* and its implementing regulations is a matter of federal constitutional principle.

The *Rehabilitation Act* typically grants wide flexibility to states in the implementation of federal requirements governing the administration and operation of the VR program. Nonetheless, Section 105 of the *Rehabilitation Act* is prescriptive with respect to SRC membership criteria, as well as the length and number of

terms a member is permitted to serve. Although the *Rehabilitation Act* provides for a few exceptions to each of these requirements (e.g., the CAP representative is not limited in the number of terms he or she can serve), even the exceptions are very specifically detailed. The specificity of these particular requirements is intended to ensure that the SRC is well qualified to carry out its responsibilities and functions in a meaningful manner.

Consequently, the Supremacy Clause of the U.S. Constitution dictates that the very clear and specific language contained in the provisions of the *Rehabilitation Act* and implementing regulations pertaining to the terms of service for SRC members supersede such state statutes and regulations. If permitted, the implementation of the state's statutes or regulations would both interfere with and undermine the proper implementation of the *Rehabilitation Act*. The implementation of a state's policy allowing a member to sit beyond his or her term would have the direct effect of undermining the provisions of Section 105 specifying the time limit for SRC membership. Therefore, no member of the SRC to whom term limits apply can continue to serve on the council once his or her term has expired, unless he or she is reappointed if eligible.

In an effort to minimize the effect SRC vacancies may have on the council's ability to continue its work, the *Rehabilitation Act* created two safeguards. First, Section 105(b)(7)(A) of the *Rehabilitation Act* makes it clear that a vacancy shall not affect the ability of the remaining SRC members to perform their duties. Second, Section 105(b)(7)(B) permits the appointing authority to delegate the authority to the remaining SRC members to fill a vacancy once the appointing authority has made the original appointment.

11. Can the same individual serve two terms representing one agency or entity and then serve additional terms representing a different agency or entity?

There is nothing in federal law to prohibit an individual, whose term of membership has expired or who has left the SRC, from being appointed to a new term. However, this appointment must be done consistent with the term-limit requirements already discussed. In other words, if an individual has served the maximum number of terms as a representative of a particular organization, he or she may not be re-appointed to that same membership slot – or any other membership slot – immediately. A meaningful break in service must occur before that individual

could sit as a member of the SRC again. Both the *Rehabilitation Act* and its implementing regulations are very clear that “members” are appointed and that “members” have specific term limits. In other words, both the *Rehabilitation Act* and its implementing regulations speak in terms of the individuals serving on the council, not the seats they represent. Therefore, in order to give meaning to the specificity of the term limits imposed by federal law, no member should be appointed – after having already served the maximum time allowed – to a new membership seat until a meaningful break in service to the council has passed. Because neither the *Rehabilitation Act* nor its implementing regulations define this break in service, RSA encourages SRCs to consider addressing this issue through its bylaws so that criteria may be established to govern when an individual may be appointed to the council again.

12. How is a SRC member replaced if he or she cannot complete his or her term?

The governor or other appointing authority in the state must select a member to fill a vacant position in the middle of a term in the same manner as members appointed to a full term (Section 105(b)(7)(A) of the *Rehabilitation Act*; 34 CFR 361.17(f)(1)). However, the appointing authority can delegate this responsibility to the remaining members of the SRC after making the initial appointment (*Id.*). The substituting member must be appointed for the entire remainder of the departing member’s term (Section 105(b)(6)(A)(i); 34 CFR 361.17(e)(2)). RSA interprets these statutory and regulatory provisions to permit a member, who completed the term of a vacating member, to be appointed for a consecutive full three-year term.

13. Can members be removed from the SRC, by whom and under what circumstances?

Neither the *Rehabilitation Act* nor its implementing regulations specify requirements governing the removal of an SRC member whose term has not expired. Each SRC has adopted bylaws that provide guidelines on how all aspects of the SRC are to be managed, which could include the varying circumstances that could cause the possible removal of an active member of the council. The council should then make a recommendation for removal to the governor or other appointing authority, who ultimately would make the decision since he or she made the original appointment.

14. Can SRC members receive compensation for their service on the council?

Members are not compensated for their service, which is voluntary, but may be compensated for expenses incurred in the course of their service, or be compensated for lost income as a result of attending to council business. This may include attending council meetings, hearings and forums sponsored by the council, or for receiving training which is deemed necessary by the council for the purpose of facilitating the members' ability to carry out their assigned duties as council members (Section 105(g) of the *Rehabilitation Act*; 34 CFR 361.17(k)).

Examples of expenses that may be reimbursed include child care expenses, costs associated with personal assistance services, reasonable accommodations for individuals with disabilities and other necessary expenses for individual members to participate in the work of the council. Compensation may be made for lost wages that occur as a direct result of participating in council activities.

RSA encourages SRCs to plan meetings and other activities of the council and its established committees to minimize the need for individuals to take time from work, and thus reduce the need for compensation for lost wages in order to maximize the resources of the council for other council activities. There is no federal requirement that compensation be equivalent to the wages earned by the individual, and, therefore, the level may be set by the council in accordance with its bylaws. RSA encourages SRCs to consider carefully the balance between maximizing the council's resources, and minimizing the inconvenience and expenses incurred by members in the course of participating on the council so that individuals are not unduly deterred from serving.

SUMMARY:

The SRC plays an important role in advising, and guiding state VR agencies to ensure the effective delivery of VR services to eligible individuals with disabilities in the community. RSA believes that the SRC should represent as great a diversity of voices from the disability community as possible, including ethnic, cultural, linguistic, gender diversity, as well as a wide range of physical, intellectual and mental health disabilities. All of the requirements discussed above are intended to support these goals of ensuring that the voice of individuals with disabilities served by state VR agencies are heard, along with the voices of the community of stakeholders, business and labor leaders, and VR service providers

who work together to assist individuals with disabilities to achieve their vocational goals.

CITATIONS: Section 105 of the *Rehabilitation Act of 1973*, as amended
VR program regulations found at 34 CFR 361.16 and 34 CFR 361.17

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