

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D. C. 20201

PROGRAM INSTRUCTION

RSA-PI-75-31

June 3, 1975

TO: STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)

SUBJECT: RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act as amended

PURPOSE: With increasing frequency, often in the planning stages of State reorganizations affecting the location and responsibility of the VR program and particularly the organizational unit, we are being called upon to interpret the relevant requirements of the Rehabilitation Act as amended.

CONTENT: The attached policy statement sets forth the RSA interpretation for the Department of the requirements in the Act and Regulations which arises in three principal areas of concern: (a) the location and responsibilities of the VR organizational unit in multi-program State agencies including other major programs in education, health, public welfare or labor; (b) the availability of full-time VR staff for providing VR services, and (c) the consolidation or centralization of certain administrative services in a multi-program State agency.

It is the intent of the policy statement to meet two main purposes: (1) to interpret the relevant requirements in law and regulations, and (2) to recognize as fully as possible within the law legitimate prerogatives of both the State and the designated sole State agency to organize the administrative structure of that agency as the State considers best. The purpose of the requirement, clearly articulated by the Congress, is to assure the maintenance of the VR program in the State as an integral, categorical program, not to be merged with human or social service organizations or to be submerged with reduced scope or effectiveness.

In capsule form the critical points in the policy, pursuant to the law, are: While a State has the option of designating a multi-program agency as the sole State agency, the law requires that there be an organizational unit devoted solely to vocational rehabilitation or vocational and other rehabilitation, with responsibility and authority for carrying out the vocational rehabilitation program of the State. The law also requires that the vocational rehabilitation program must be comparable to other major organizational units in its location and status within the designated State agency. Further, all decisions affecting eligibility, the nature and scope of, and the provision of vocational rehabilitation services must be made through the VR unit. Regulations implementing the law specify that the State plan must provide for "clear lines of administrative and supervisory authority" within the sole State agency and that it must also provide that the VR unit be responsible for the administration of such State agency's VR program. This set of requirements means also, that, while certain purely administrative functions may be performed by personnel outside the VR unit, centralization of functions on the State agency level is impermissible when it results in interference with the decision-making capacity of the administrator of the VR unit to direct the VR program in the State.

The policy statement should in no way, within the requirements of the law, be taken as a signal to deter or lessen the extensive cooperative and joint efforts VR agencies have undertaken with other

State and local programs to improve and expand services to the disabled who need vocational rehabilitation, especially the severely disabled.

The Office of the General Counsel, H.E.W., has rendered a favorable opinion supporting this policy.

INQUIRIES TO: Regional Rehabilitation Directors

Andrew S. Adams
Commissioner of Rehabilitation Services

Attachment

Policy Statement

State VR Organizational Requirements of the Rehabilitation Act of 1973, as amended

Purpose: The purpose of this policy statement is to (1) lay out the three principal organizational problems which arise in implementing the pertinent requirements of the Rehabilitation Act of 1973 as amended and the regulations, and (2) state the interpretation with regard to each of these by Rehabilitation Services Administration for the Department.

The three principal areas of concern are:

- Problem Area A. the location and responsibilities of the VR organizational unit in State agencies which include other major programs in education, health, public welfare, and labor,
- Problem Area B. the availability of full-time VR staff for providing VR services, and
- Problem Area C. the consolidation or centralization of certain administrative services in a multi-program agency.

With the proliferation of the number of States either considering or adopting various types of multi-program departments or agencies in the human service, including VR, we are increasingly called upon, often in the planning stages, to interpret the meaning of the statutory language relating to these problem areas of organization. Although each proposal must be considered individually, a policy statement drawing together earlier single statements will provide guidance both to RSA staff in central and regional offices and to States.

It is the obligation of RSA for the Department to interpret the statutory and regulatory requirements and to give full recognition to the legitimate prerogatives of the State and the sole State agency to organize the administrative structure of that agency as the State considers best. The intent is not, nor should it ever be, to thwart a State's prerogatives in this regard.

Background. The Rehabilitation Act of 1973 carried forward the language as to organizational requirements which has been in the basic legislation since 1965. The several specific requirements have consistently been seen as affirming and reaffirming a cardinal principal of VR legislation namely that the VR program is, and is to be maintained, as an integral categorical program, not to be merged with human or social service organizations. This principle was clearly articulated in the Congressional Oversight Hearings of November 30 and December 10, 1973.

The 1965 VR legislation added two options for the States as to the designation of a sole State agency for VR, i.e. an agency primarily concerned with VR and at least two other major units administering public education, health, welfare or labor programs. The Act retained the State option of designating the State agency administering or supervising the administration of education or vocational education in the State. The 1965 Act also introduced the language concerning the organizational unit, which is carried also in the current legislation.

The statutory provisions as to the organizational unit in effect place constraints upon the alternatives available to the State in designating a sole State agency. The objective of these constraints continues to be to avoid submerging the VR program and, by implication, reducing its scope and/or effectiveness.

Problem Area A.

Location of VR Program and responsibilities of VR Organizational unit. In light of Congressional intent and the statutory provisions in section 101(a)(1) and (2) of the Rehabilitation Act, then, a State may elect to place the VR program in and designate as the sole State agency to administer or supervise the VR program either:

- (1) a State agency primarily concerned with VR or with vocational and other rehabilitation of handicapped individuals
- (2) the State agency administering or supervising the administration of education or vocational education in the State, or
- (3) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State (Regulations 45 CFR 401.6(b)).

The law provides an exception permitting a State to designate the State agency for the blind or other agency which provides assistance or services to the adult blind as the sole State agency to administer the part of the State plan under which vocational rehabilitation services are provided for the blind.

When a State elects choice (2) or (3) described above, then the following requirements apply:

- a. The State agency designated as the sole agency must include a vocational rehabilitation bureau, division or other organizational unit which is:
 - (1) primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals, and is responsible for administration of the vocational rehabilitation program of the State agency,
 - (2) has a full time director, and
 - (3) has a staff employed on such rehabilitation work of the organizational unit all or substantially all of whom are employed full time on such work. (Regulations 45 CFR 401.7(b)).

The Regulations implementing the statute specify that State plans must provide for:

- (1) clear lines of administrative and supervisory authority within the sole State agency and must provide that the VR organizational unit be responsible for the administration of the State agency's VR program;
- (2) all decisions affecting eligibility for, and the nature and scope of VR services to be provided, to be made by the State agency through its organizational unit, and not delegated to any other agency or individual; and
- (3) the organizational unit's responsibility for administration of the VR program which must include the determination of eligibility for and the provision of VR services under the State plan (Regulations 45 CFR 401.6(e) and 401.7).

Further, the organizational unit must be located at an organizational level and have organizational status comparable to that of other major organizational units of the agency. A State with only one designated agency may have two organizational units (one for the blind); these provisions would then apply to each such unit. (Regulations 45 CFR 401.7(c)).

The Regulations reflect these statutory provisions and state that in evaluating the comparability of the organizational level and status of the organizational unit, the Secretary will give consideration to such factors as the directness of the reporting line from the administrator of organizational unit for vocational rehabilitation to the chief officer of the designated State agency; the title, status, and grade of the administrator of the organizational unit for VR, as compared with those of the heads of other organizational units of the State agency; the extent to which the administrator of the VR organizational unit can determine the scope and policies of the VR program; and the kind and degree of authority delegated to the administrator of the VR organizational unit for the administration of the VR program.

Also related is the requirement of the previous regulations, (section 401.6(a)), deleted in the interest of brevity (a major aim in the latest revision), that the State plan describe methods of administration providing for coordination and integration of activities, adequate controls over operations, channels for the development and interpretation of policies and standards, and effective supervision of staff under the VR program.

The language of the laws and regulations has consistently been interpreted to mean that the VR organizational unit must have clear, direct supervision of staff delivering VR services to individuals, with regard to program policy, operations, and related technical program matters.

The references in the regulations to three central responsibilities, ie., decisions as to (a) eligibility, (b) the nature and scope of VR services to be provided, and (c) the provision of services, have been interpreted as clarification of what is meant by the legal and regulatory language about responsibility for the VR program. The specific responsibilities are not interpreted as the only mandatory responsibilities of the VR organizational unit but as prime examples of what such responsibility means.

Approval of each individual State plan proposal will be based on a determination that the pertinent requirements of the law and regulations described in this statement are met. In instances where there is either question or lack of clarity as to whether these requirements are met or where a State agency, Governor, or legislature seeks technical consultation from the Department, Regional staff will be available to provide assistance and consultation. Every effort will be made to negotiate to achieve arrangements which meet the State plan requirements and the State's objectives. Where State plan approval is conditioned upon certain specified assurances, the Rehabilitation Services Administration for the Department will undertake onsite reviews from time to time to assure that such assurances are operative in practice.

Problem Area B. Availability of all or substantially all full-time VR staff

The Act explicitly requires that a VR organizational unit have staff employed on its VR work all or substantially all of whom are employed full time on such work (section 101(a)(2)(A)). This means that there may be a proportionately small segment of staff employed less than full time on VR work.

Staff of the VR organizational unit directly involved in service delivery must be assigned only to VR programs, under the supervision of the VR organizational unit. Where VR staff are not full time on VR work, as an exception to the prevailing pattern, no question will be raised if this group of assignments represents a very small or minimal proportion of the total staff, eg., less than 5 or 10 percent of the total staff, eg., VR counselors.

In this context, it is assumed that the requirements as to the organizational unit and proper cost allocation for the time of such less than full time staff are met, for purposes of Federal financial participation.

This question has arisen most recently mainly in several States with large rural territories, apparently in consideration of the possibility of assigning a "combined" worker in a few areas to work, for example, on VR and social services. It is, however, a question which may become more central in the planning of consolidated or integrated programs for delivery of two or more human services including vocational rehabilitation.

Problem Area C. Centralization or Consolidation of Administrative Functions at State Agency Level

The law requires that the organizational unit be assigned responsibility for the VR program. The regulations further specify that the State plan must provide that (1) all decisions affecting eligibility for and the nature and scope of VR services to be provided, be made by the State agency through its organizational unit, and not delegated to any other agency or individual; and (2) the organizational unit's responsibility must include the determination of eligibility for and the provision of VR services under the State plan.

Also related is the requirement in section 401.14 of the regulations that staff of the State agency be of sufficient number and with appropriate qualifications to carry out all functions required under the Act and Part 401 regarding the VR program.

The regulations also requires that such staff include specialists in the areas of program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, expansion and improvement of services to the severely handicapped, and affirmative action for equal employment opportunity for the handicapped.

As umbrella or other type of State agencies or departments combining two or more programs are organized in the States, there is typically some degree of centralization at the State agency level of certain routine administrative functions, often described as staff or support functions. These include housekeeping, bill paying, data processing, accounting, and routine personnel processing.

Such centralizations of support administrative functions present no question vis-a-vis the requirements of the Act and regulations.

As this more or less traditional core is extended to include line administrative functions such as those listed below, however, questions arise as to whether, without effective voice in the making of key policy decisions in these areas, the VR organizational unit is left with sufficient responsibility and authority to justify a determination that the requirements of the Act and regulations are being met.

- staff development and training
- program planning
- program evaluation, including monitoring
- VR budget development and presentation
- personnel management
- quality assurance/internal audit
- priority setting and execution
- administrative review and fair hearing
- rehabilitation facilities development and utilization.

Based on some experience when such functions are placed at the State agency or department level, the VR unit may not have either effective voice or strong input into the policy planning, operations or similarly important program decisions made in these areas.

RSA's interpretation here is that in determining the approvability of State plans where such centralization of functions is proposed, it will be necessary to have assurance that such organization will permit and will operate without reducing the decision-making capacity of the director of the VR unit to direct the VR program of the State agency. Proposed State plans which include such centralization will be approved only on the basis of assurance as described above and submitted as part of the State plan (Section 3.3). States will be notified that there will be reviews of operations by Federal staff to determine that State agencies are in practice complying with such assurances.