

**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, DC 20202**

**TECHNICAL ASSISTANCE CIRCULAR  
RSA-TAC-98-04  
Date: 09-29-98**

**ADDRESSEES:** STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)  
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)  
CLIENT ASSISTANCE PROGRAMS  
REGIONAL REHABILITATION CONTINUING EDUCATION  
PROGRAMS  
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE  
PROGRAMS  
RSA SENIOR MANAGEMENT TEAM

**SUBJECT :** Responsibility of State VR Agencies in the Provision of Rehabilitation  
Technology

**CITATIONS :** Section 7(13) of the Rehabilitation Act of 1973, as amended (Act);  
Section 101(a)(5)(C) of the Act;  
Section 101(a)(8) of the Act;  
Section 101(a)(31) of the Act;  
Section 103(a)(12) of the Act;  
Section 103(b)(5) of the Act;  
34 CFR 361.5(b)(9) and (39);  
34 CFR 361.48(a)(18);  
34 CFR 361.48(b)(1)-(3);  
34 CFR 361.53(b)(6)

**CONTENT :** The Rehabilitation Services Administration (RSA) has received several inquiries asking whether the State vocational rehabilitation (VR) agency or the individual's employer has primary responsibility for providing rehabilitation technology to an individual with a disability who is a consumer of the State VR agency. This issue has been the subject of much discussion since the passage of the Americans with Disabilities Act (ADA) and, prior to that, passage of Title V of the Rehabilitation Act of 1973, as amended (Act). The purpose of this Technical Assistance Circular (TAC) is to clarify the responsibilities of various parties with regard to the provision of rehabilitation technology.

This TAC addresses the above issue solely from the perspective of the requirements set forth in Title I of the Act and its implementing

regulations at 34 CFR Part 361. Accordingly, the guidance in this TAC addresses responsibilities in providing VR services during an individual's employment-related training through participation in the State VR services program. The Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) can provide further guidance in interpreting ADA provisions as they relate to employment. In addition, the Department of Labor is mandated to interpret and enforce Section 503 of the Act. Each Federal agency is authorized to interpret and enforce Section 504 of the Act as it relates to its own programs.

Section 101(a)(8) of the Act and 34 CFR 361.53(b)(6) are the primary Title I statutory and regulatory provisions that govern the responsibilities of VR agencies and employers in providing rehabilitation technology under the VR program. Both of these provisions exempt certain VR services, including rehabilitation technology, from the State agency's general obligation to search for comparable benefits and services prior to providing VR services. The preamble discussion under 34 CFR 361.53, published in the February 11, 1997 issue of the *Federal Register* (page 6330), provides instructive guidance related to this exemption and the State VR agency's responsibility to purchase necessary rehabilitation technology:

"The statute requires DSUs to provide certain services (e.g., rehabilitation technology) as mandatory services without determining the availability of comparable services and benefits as is required for the remaining VR services. The Secretary agrees that...the final regulations should clarify that the exempted services are not subject to a prior comparable services and benefits determination, i.e., the DSU has the affirmative responsibility to provide these services without determining the availability of alternative funding sources. Nevertheless, the Secretary agrees that, if an exempted service such as an assistive technology device is known to be readily available from an alternative source at the time the service is needed to accomplish a rehabilitation objective in the individual's [individualized written rehabilitation program (IWRP)], it is prudent for the DSU to use those sources in order to conserve funds provided under this program."

Based on the above listed statutory and regulatory requirements, an individual with a disability, who is a consumer of the VR program, must be provided necessary rehabilitation technology at the time the individual needs the equipment to progress toward achieving an employment outcome consistent with the individual's Individualized Plan for

Employment (IPE). [Note: The 1998 amendments to the Act, which were signed into law on August 7, 1998, substituted IPE for all references to "IWRP" which were in the law prior to August 7, 1998. Therefore, this TAC will use the new terminology of "IPE" rather than "IWRP."] Chiefly, it is the VR agency's responsibility to provide such services to VR consumers. Thus, the VR agency must provide needed rehabilitation technology during the period that the individual is participating in the VR program and to the extent that the provided service is reflected in the individual's initial or amended IPE. In that way, State agencies will meet the statutory and regulatory obligation with regard to rehabilitation technology and VR consumers will avoid disputes between the State VR agency and employers in providing necessary, timely rehabilitation technology services.

Nevertheless, the exemption from conducting a search for comparable services and benefits does not prevent the State VR agency from taking advantage of resources, such as the employer or some other entity, that would provide ready access to a needed rehabilitation technology service. As the preamble to the regulations states, it is prudent for the VR agency to use rehabilitation technology that it knows is "readily available" at the time the service is needed. Thus, while a VR agency should not expend time searching for alternative sources for rehabilitation technology, an agency may conserve VR funds by using other sources of which it has knowledge and which it can readily access. To this end, RSA encourages a State VR agency to consult with projects supported by the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Tech Act) in order to develop systems change initiatives and identify alternative sources of rehabilitation technology for its consumers. Although Tech Act projects do not provide actual rehabilitation technology devices or services to individuals, the projects are designed to assist States in identifying and developing readily available sources of rehabilitation technology that the VR agency could access.

It is also important to clarify that employers are not considered "comparable services and benefits" under 34 CFR 361.5(b)(9). Still, it is entirely appropriate for the State VR agency to question whether an employer is able to purchase the necessary assistive technology as a "reasonable accommodation" for an individual to fulfill the responsibilities of his or her job. State VR agency personnel are encouraged to provide technical assistance generally to employers who wish to hire individuals with disabilities, including technical assistance on necessary rehabilitation technology and other reasonable accommodations. It should be noted that many State VR agencies have found that providing technical assistance on ADA and section 504 issues to employers, especially regarding reasonable accommodations issues, has enhanced the State agency's ability to work

with employers and increased the possibilities of employers purchasing necessary assistive technology for their employees. Nevertheless, if the employer is unable to provide a VR consumer needed rehabilitation technology, the State VR agency remains obligated to provide the equipment without delay.

There is no basis in Title I of the Act or its implementing regulations for the State VR agency to provide necessary rehabilitation technology contingent on the employer meeting the "undue hardship" or "undue burden" tests set forth in the ADA. Such contingencies potentially would deny the individual needed services that Title I of the Act obligates the State agency to provide during the individual's participation in the VR program. Once that participation ends, responsibility to provide rehabilitation technology lies elsewhere (e.g., with the employer or individual). Again, questions as to whether employers are satisfying their obligations and providing accommodations to their employees under the ADA should be referred to DOJ or the EEOC.

Although primary responsibility for providing rehabilitation technology to VR consumers falls on the State VR agency, RSA encourages State VR agencies and the employer community to work in partnership to ensure that individuals with disabilities receive necessary rehabilitation technology at the time they need a particular service. Many State agencies have been successful in negotiating cost-sharing arrangements with employers, including arrangements that involve the individual's participation under an agency's financial means test. In any event, RSA believes greater collaboration between VR agencies and employers in providing rehabilitation technology is essential to ensure that greater numbers of individuals with disabilities, including those with severe disabilities, can achieve high quality employment outcomes.

**INQUIRIES:** RSA Regional Commissioners

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Fredric K. Schroeder, Ph.D.  
Commissioner  
Rehabilitation Services  
Administration

cc: CSAVR  
NAPAS  
NCIL