

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202-2531

TECHNICAL ASSISTANCE CIRCULAR
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TO: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
CLIENT ASSISTANCE PROGRAMS
REGIONAL REHABILITATION CONTINUING EDUCATION
PROGRAMS (RRCEPs)
RSA SENIOR MANAGEMENT TEAM

SUBJECT: State Rehabilitation Advisory Council

CITATIONS: Sections 101(a)(36) and 105 of the Rehabilitation Act
of 1973, as amended

BACKGROUND: This summarizes key provisions of the Rehabilitation Act Amendments of 1992 (P. L. 102-569) related to the State Rehabilitation Advisory Council (Council). Given the pivotal role of the Council relating to the State plan for vocational rehabilitation services and the statewide strategic plan for expanding and improving vocational rehabilitation services, States should not wait for the receipt of the implementing regulations to initiate activities to establish a Council.

Section 105 of the Act mandates the establishment of a Council in States that do not have an independent, consumer-controlled commission established under State law to oversee the operation of the vocational rehabilitation program. The provisions of section 105 require that the Council be consumer-controlled so as to provide individuals with disabilities a stronger and more substantive role in shaping the programs and services established to support their employment goals and aspirations. As such, the Council provides consumers of rehabilitation services with a formal mechanism to influence at the systemic and policy level the direction of rehabilitation programming within their States.

1. TITLE I FUNDING CONTINGENT ON ESTABLISHMENT OF COUNCIL

The interest of Congress in seeing that a State has a consumer-controlled commission overseeing the vocational rehabilitation program or a consumer-controlled Council meeting the provisions of section 105 is reflected by the requirement in section 105(a)(1) that such a commission or Council must be in place in order for a State to receive Federal funds under title I of the Act for the vocational rehabilitation and the client assistance programs under part B and the innovation and expansion program under part C. Thus, for a State to receive its title I funding, it must assure in its State plan for vocational rehabilitation services that it has in place a Council meeting the requirements of section 105 or an independent, consumer-controlled commission meeting the requirements of section 101(a)(36)(B) or (C).

2. OPTION TO ESTABLISH A COMMISSION OR A COUNCIL

The Amendments give States the option of establishing a Council that meets the requirements of section 105 of the Act or a commission(s) that meets the following requirements:

- *The commission must be independent and established under State law to oversee the operation of the vocational rehabilitation program and must:
 - *be consumer-controlled by persons who are individuals with mental and physical impairments that substantially limit major life activities and who represent individuals with a broad range of disabilities;
 - *have representation of family members, advocates and authorized representatives of individuals with mental impairments;
- and
- *to the extent feasible, conduct or have the authority to conduct and analyze the effectiveness of and consumer satisfaction with the provision of vocational rehabilitation services and the performance of the State agencies and other entities responsible for providing vocational rehabilitation services to individuals with

disabilities. (Section 101(a)(36)(B) of the Act)

*In a State where there are two State vocational rehabilitation agencies, the Amendments provide additional choices with respect to establishing a commission(s). The options are:

*a consumer-controlled independent commission, as described previously, that is responsible under State law for overseeing both agencies; or

*a consumer-controlled independent commission, as described previously, that is responsible under State law for overseeing the General agency and a separate independent commission responsible under State law for overseeing the agency for individuals who are blind and which is required by State law to be consumer-controlled by individuals who are blind and to represent individuals who are blind.

(Section 101(a)(36)(C) of the Act)

The Council identified in sections 101(a)(36)(A) and 105 is in some respects similar to the commission(s) identified in section 101(a)(36)(B) and (C). However, the Rehabilitation Services Administration (RSA) believes the fundamental difference between the Council and the commission(s) is that while both must be consumer-controlled and have oversight responsibilities with respect to the vocational rehabilitation program, the Council's role is advisory in nature whereas the commission(s) described in section 101(a)(36)(B) and (C) is directly responsible for overseeing and controlling the operation of the vocational rehabilitation program within the State. As such, the commission(s) serves as the designated State agency(ies). States that have such commissions are not required to establish Councils meeting the requirements of section 105.

3. OPTION FOR SEPARATE COUNCIL FOR STATE AGENCY FOR INDIVIDUALS WHO ARE BLIND

The Amendments provide States in which there are two State agencies, one for individuals who are blind and the other for individuals with other types of impairments, the discretion to establish either one Council for both agencies or two Councils, one for each agency. (Section 105(a)(2) of the Act)

4. COMPOSITION OF COUNCIL

The composition of the Council is clearly specified in the Amendments. The size of the Council is at the discretion of the State, provided the requirements related to the composition of the Council are satisfied. The Council must be consumer-controlled in that the majority of the members of the Council must be individuals with disabilities, i.e., any individual who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. The statute, however, is clear that if an individual with a disability is also an employee of the designated State vocational rehabilitation agency, that individual cannot be counted for purposes of establishing that the majority of the Council members are individuals with disabilities.

The Council must be comprised of at least one representative of:

- *the Statewide Independent Living Council;
- *a parent training and information center established under the Individuals with Disabilities Education Act;
- *the client assistance program;
- *vocational rehabilitation counselors, with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member(s) of the Council if employed by the State agency; and
- *community rehabilitation program service providers.

In addition, the Council is to be comprised of:

- *four representatives of business, industry, and labor;

- *representatives of disability advocacy groups representing a cross section of individuals with disabilities, and parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable to due to their disabilities; and
- *current or former applicants for, or recipients of, vocational rehabilitation services.

The Director of the State unit is to be an ex officio, nonvoting member of the Council. In addition, anyone who serves as an impartial hearing officer under section 102(d) cannot serve as a member of the Council. (Sections 105(b)(1), (2) and 7(28)(A)(ii) of the Act)

5. APPOINTMENT OF MEMBERS OF THE COUNCIL

Members are to be appointed by the Governor or the appropriate entity in the State responsible for making appointments. The term "appropriate entity" is not defined in the statute; however, the Senate Committee Report (102-357) accompanying the Senate bill provides the following explanation of the Committee's views on this subject.

The Committee bill specifies that the Council members will be appointed by the Governor or by the "appropriate entity within the State responsible for making appointments." If, pursuant to State law, a separate State Board (rather than the Governor) has responsibility for overseeing the operation of the designated State agency, that Board shall be considered an "appropriate entity" for purposes of making the appointments. (pp.43-44)

Based on this explanation, it is RSA's interpretation that a designated State agency (or designated State unit) cannot serve as the "appropriate entity" for appointing members to the Council. From the Senate Committee Report and the pertinent statutory language, it appears

that the "appropriate entity" must be an independent body established under State law to which the designated State agency is accountable and that has appointment authority in lieu of the Governor.

The appointing authority is to select members after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities. (Section 105(b)(3) of the Act)

6. SELECTION OF COUNCIL CHAIRPERSON

The Council is to select a chairperson from among the Council membership; however, in those States in which the Governor does not have veto power under State law, the Governor is to designate a member of the Council to serve as the chairperson or require the Council to make such a designation. (Section 105(b)(5) of the Act)

7. LENGTH OF TERM OF COUNCIL MEMBERS

*Each member of the Council is to serve for a term of not more than 3 years, except that -

*a member appointed to fill a vacancy occurring prior to the expiration of a member's term is to be appointed for the remainder of the term; and

*the terms of service of the members initially appointed are to be set by the appointing authority so that expiration of terms will occur on a staggered basis.

*No member of the Council can serve more than two consecutive full terms.

*Any vacancy occurring in the membership of the Council is to be filled in the same manner as an original appointment and the vacancy is not to affect the power of the remaining members to execute the duties of the Council. (Section 105(b)(6) and (7) of the Act)

8. FUNCTIONS OF THE COUNCIL

The overall function of the Council is advisory in nature and specific functions identified in the Amendments include:

- *review, analyze, and advise the designated State unit regarding the performance of its responsibilities under title I, particularly responsibilities relating to -
- *eligibility (including order of selection);
- *the extent, scope, and effectiveness of services provided; and
- *functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives under title I;
- *advise the designated State agency and the designated State unit, and, at the discretion of the designated State agency, assist in the preparation of applications, the State plan for vocational rehabilitation services, the strategic plan and amendments to the plans, reports, needs assessments, and evaluations required by title I;
- *conduct, to the extent feasible, a review and analysis of the effectiveness of and consumer satisfaction with -
- *the performance of functions of State agencies and other public and private entities responsible for performing functions for individuals with disabilities; and
- *vocational rehabilitation services provided or paid for from funds made available under the Act or through other public or private sources and provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities;
- *prepare and submit an annual report to the Governor or appropriate State entity and the Commissioner

on the status of vocational rehabilitation programs operated within the State, and make the report available to the public;

- *coordinate with other councils within the State, including the Statewide Independent Living Council, the advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council and the State Mental Health Planning Council;
- *advise the designated State agency and provide for coordination and the establishment of working relationships between the State agency and the Statewide Independent Living Council and centers for independent living within the State; and
- *perform such other functions, consistent with the purpose of title I, as the Council determines to be appropriate and that are comparable to the other functions performed by the Council. (Section 105(c) of the Act)

9. PROHIBITION ON CONFLICT OF INTEREST

No member of the Council is to vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law. (Section 105(e) of the Act)

10. RESOURCE AND MANAGEMENT PLAN FOR THE COUNCIL

***Funding.**

Key to the ability of the Council to carry out its responsibilities will be adequate funding. To provide funding support for the Council, a variety of funding streams can be used such as State and private funds; funds allotted under title I, part B for vocational rehabilitation services and part C (innovation and expansion); and, Social Security reimbursements. (Sections 101(a)(34)(B), 123(12), and 108 of the Act)

These funds, together with the necessary personnel resources, should serve as the basis for the resource plan

that the Council, in conjunction with the designated State unit, is to develop to carry out the functions of the Council. The Amendments stipulate that to the maximum extent possible the resource plan is to rely on the use of existing resources and that any disagreement between the Council and the designated State unit over the allocation of resources is to be resolved by the Governor or the appointing authority, as appropriate.

***Personnel Management.**

The Council, consistent with State law, is to supervise and evaluate staff and other personnel as may be necessary to carry out its functions. While assisting the Council in carrying out its responsibilities, staff and other personnel are not to be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest. In discussing the provision of section 105(d) of the Act, the Conference Report (102-973) states the following:

The Conferees expect that the State Rehabilitation Advisory Council will be fully independent from the State vocational rehabilitation agency even while relying, to the maximum extent possible, on existing resources from the State vocational rehabilitation agency to provide staff and other personnel. The Conferees expect that staff provided by the State vocational rehabilitation agency, when assigned to work for the Council, will work solely on behalf of the Council and will not be assigned duties that create a conflict of interest. The Conferees expect that administrative arrangements made in the State will be consistent with this expectation so that each State Rehabilitation Advisory Council can operate independently. (p.180)

11. COUNCIL MEETINGS/FORUMS/HEARINGS

***Frequency.**

The Council is to convene at least 4 meetings a year in such places as it determines to be necessary to conduct Council business. It also may convene forums or hearings as it determines appropriate and necessary to carry out its duties.

***Public Meetings.**

The meetings are to be publicly announced and open and accessible to the general public, unless there is a valid reason for an executive session.

(Section 105(f) of the Act)

12. STATE PLAN REQUIREMENTS RELATED TO THE COUNCIL

To underscore the importance of the Council as a vehicle for real and solid consumer involvement in the programs that affect them and to give individuals with disabilities an effective mechanism to influence the direction of these programs, the Amendments mandate the following Council-related requirements for the State plan for vocational rehabilitation services.

***State Plan Assurances.**

The State plan must assure that:

- *a Council meeting the criteria of section 105 is in place (or a commission meeting the requirements of section 101(a)(36)(B) or (C));
- *the State agency (unit) seeks and considers on a regular and ongoing basis advice from the Council regarding the development of and revisions to:
- *the State plan for vocational rehabilitation services and its supported employment services supplement;
- *the strategic plan under part C of title I; and
- *policies/procedures pertaining to the provision of vocational rehabilitation services.
- *the State agency transmits to the Council

- *copies of all materials required by the Act to be submitted to the Commissioner;
- *all policies, practices and procedures of general applicability provided to or used by rehabilitation personnel; and
- *copies of due-process hearing decisions.

***State Plan Descriptions.**

The State plan must also provide:

- *a description of the manner in which the State agency will modify its policies and procedures based on the consumer satisfaction surveys conducted by the Council, and
- *a summary of the advice provided by the Council, including the Council's recommendations from its annual report; its survey of consumer satisfaction; and other reports of the Council. Also, the State agency must include in the plan its response to the advice and recommendations, with an explanation for the rejection of any advice or recommendations. (Section 101(a)(32) and (36) of the Act)

13. ROLE OF THE COUNCIL IN IDENTIFICATION OF POOL OF QUALIFIED PERSONS TO SERVE AS IMPARTIAL HEARING OFFICERS

The selection (on a random basis or by agreement between the Director of the designated State unit and the individual with a disability or the individual's representative) of the impartial hearing officer is to be from a pool of qualified persons identified jointly by the designated State unit and the following members of the Council:

- *representative(s) of community rehabilitation service providers;
- *the four representatives of business, industry and labor;
- *representatives of disability advocacy groups representing a cross section of individuals with disabilities, including individuals who, due to their disabilities, can not represent

themselves or have difficulty in doing so;
and

*current or former applicants or recipients of vocational rehabilitation services. (Section 102(d)(2)(B) and (C) of the Act)

In those States in which there is a commission(s) meeting the requirements of 101(a)(36)(B) or (C), the pool of qualified persons to serve as impartial hearing officers is to be jointly identified by the designated State unit and the commission(s). (Section 102(d)(2)(C)(ii)(II) and (III) of the Act)

14. ROLE OF THE COUNCIL IN FEDERAL MONITORING

In conducting monitoring reviews, RSA staff will meet with the Council and consider, among other sources, information provided by the Council.
(Section 107(a)(2)(G) of the Act)

15. ROLE OF THE COUNCIL IN THE DEVELOPMENT OF THE STRATEGIC PLAN

In developing the statewide strategic plan, the State agency is to:

- *meet with and receive recommendations of members of the Council;
- *reflect the input of the Council in the plan;
- *explain in the plan why any recommendations of the Council were not accepted; and
- *develop a procedure to ensure the ongoing input of the Council during the period of plan implementation.
(Section 122(b), (c) and (d) of the Act)

All of these provisions of the Amendments related to the Council are designed to provide consumers a real voice in the dialogue at the State level regarding the direction of the vocational rehabilitation and supported employment programs; the provision of rehabilitation services; and how to make those services a more effective tool in enabling individuals with disabilities achieve their chosen employment goals.

Achieving the intent of these provisions will be a challenge both for consumers of rehabilitation services and the

State vocational rehabilitation agencies. This challenge, however, can be successfully met if all parties embrace the principle articulated in section 100 of the Act that individuals with disabilities and their advocates are full partners in the vocational rehabilitation program and must be involved on a regular basis and in a meaningful manner in policy development and implementation.

INQUIRIES: RSA Regional Commissioners

William L. Smith
Acting Commissioner