



National Rehabilitation Association

PO Box 150235 • Alexandria, VA 22315

(703) 836-0850 • (888)-258-4295 • (703) 836-0848 FAX

E-mail: info@nationalrehab.org • website: <http://www.nationalrehab.org>

November 6, 2014

Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: NRA Response to Texas Sunset Commission Recommendations/Vocational Rehabilitation Programs

Dear Chairperson Nelson and Vice Chairperson Price:

I am writing on behalf of the National Rehabilitation Association (NRA). We appreciate the opportunity to comment on the Sunset Staff Report "Health and Human Services Commission and System Issues."

The NRA is the Nation's most established and respected membership association for rehabilitation professionals. The NRA works to eliminate barriers and increase employment opportunities for people with disabilities. We work toward creating a society in which there are no barriers--environmental or attitudinal--to full employment and participation in community life. Our membership includes professionals working in public and private vocational rehabilitation (VR) agencies, members of the business community, rehabilitation educators, and individuals with disabilities.

I served as the Commissioner of the Rehabilitation Services Administration (RSA) within the U.S. Department of Education from 1994 to 2001. RSA is the federal agency that administers Title IV of the Workforce Innovation and Opportunity Act: the Rehabilitation Act of 1973, as Amended (Act). While serving as the RSA Commissioner, I developed the regulations that continue to govern the VR program. For this reason my comments do not reflect opinion or one person's reading of the federal program requirements; they are not exaggerations or hyperbole; they are conclusions of law.

As you know, four (4) of the fifteen (15) Issues and Recommendations contained in the Commission's report relate to the administration of the state's VR program currently administered by the Department of Assistive and Rehabilitative Services (DARS). The NRA is deeply concerned by the first recommendation in the report. As written it would entirely dismantle the current structure of DARS and would jeopardize federal funding and essential services that enable Texans with disabilities to prepare for and secure gainful employment.

Loss of Federal Funds: If implemented, the Commission's report recommendations would result in Texas losing its nearly \$240 million in federal financial support authorized by the Act for the

["The National Rehabilitation Association \(NRA\) is a member organization that promotes ethical and state of the art practice in rehabilitation with the goal of personal and economic independence of persons with disabilities."](#)

administration of the VR program (FY 2014: Texas Division for Blind Services, \$47,623,714; Texas Division for Rehabilitative Services, \$190,494,856 - Total: \$238,118,570).

Organizational Requirements: Numerous federal requirements govern the administration of the state's VR program including requirements related to the Designated State Agency (DSA) which is the agency designated to administer the Act and the organizational unit within a State agency (known as the Designated State Unit (DSU)) that administers the VR program within the DSA. Contrary to the Sunset Commission recommendations, the Act requires that the organizational unit, that is, the DSU: 1) be primarily concerned with the rehabilitation of individuals with disabilities; 2) be administered by a full-time director; 3) have all or substantially all of its staff work full time providing VR services; and 4) be located at an organizational level comparable to that of other major organizational units of the larger agency in which it is located.

The organizational requirements for the VR program are outlined in a Technical Assistance Circular (TAC-13-02) issued by RSA. The TAC gives guidance to states that are considering the reorganization of their VR programs. The following is excerpted from the TAC:

“The *Rehabilitation Act* and its implementing regulations permit states to select from among a variety of options when organizing the VR program within their governmental structures. Section 101(a)(2)(A) of the Rehabilitation Act and regulations at 34 CFR 361.13(a) require a state to identify a DSA as the sole state agency to administer the VR State Plan, or two DSAs, one “general” and the other “blind,” each responsible for the administration of its respective portion of the plan (Section 101(a)(2)(A)(i) of the *Rehabilitation Act* and 34 CFR 361.13(a)(3)). For purposes of the VR program, a DSA must be either: 1) a state agency primarily concerned with VR, or VR and other rehabilitation, of individuals with disabilities; or 2) a state agency that includes a VR bureau, division or other organizational unit, referred to as a DSU (Section 101(a)(2)(B) of the Rehabilitation Act and 34 CFR 361.13(a)(1)).

When considering a change in the organization of the governmental entity or entities currently administering the VR program (e.g., the DSA(s) and/or DSU(s)), states must ensure that the proposed structure meets the required statutory and regulatory requirements set forth at section 101(a)(2) of the *Rehabilitation Act* and 34 CFR 361.13. Specifically, if the state identifies a new DSA to administer the VR State Plan, the state must ensure the agency is primarily concerned with VR, or VR and other rehabilitation of individuals with disabilities. In the event that the new DSA is not primarily concerned with VR, or VR and other rehabilitation of individuals with disabilities, the state must assure the agency contains a DSU that:

- is primarily concerned with VR, or VR and other rehabilitation, of individuals with disabilities, and is responsible for the VR program of the DSA;
- is administered by a full-time director;
- employs staff on the rehabilitation work of the organizational unit all or substantially all of whom devote their full time to such work; and
- is located at an organizational level and has an organizational status within the DSA comparable to that of other major organizational units of the DSA.”

Non-delegable Responsibilities: Another area of serious concern relates to the sunset Commission's recommendation to establish a common or unified process for determining

eligibility for a variety of programs grouped within a single state agency. The Act includes a number of functions that must be carried out by VR counselors and which may not be delegated. These include the determination of eligibility for VR program participants. The VR program regulations require that the DSU carry out the following non-delegable responsibilities:

- the determination of eligibility, the nature and scope of services, and the provision of those services (34 CFR 361.13(c)(1)(i));
- the determination that individuals have achieved employment outcomes (34 CFR 361.13(c)(1)(ii));
- policy formulation and implementation (34 CFR 361.13(c)(1)(iii));
- the allocation and expenditure of VR funds (34 CFR 361.13(c)(1)(iv)); and
- the participation of the DSU in the one-stop service delivery system in accordance with Title I of the Workforce Investment Act (WIA) and the regulatory requirements specified in 20 CFR Part 662 (34 CFR 361.13(c)(1)(v)).

Further guidance regarding the non-delegable functions of the DSU is found in TAC-12-03. The TAC reads in part:

“As stated earlier in this TAC, Section 101(a)(2)(B)(ii)(I) of the *Rehabilitation Act* and 34 CFR 361.13(b)(1)(i) require that the DSU be responsible for the administration of the VR program. The statute does not describe the nature and scope of this responsibility or how it is to be carried out by the DSU. However, the VR program implementing regulations, found at 34 CFR 361.13(c)(1), require that certain functions be reserved solely to the staff of the DSU and that these functions may not be delegated to any other agency or individual (34 CFR 361.13(c)(2)). These “non-delegable” functions relate to decisions affecting:

- eligibility, the nature and scope of services, and the provision of those services;
- the determination that individuals have achieved employment outcomes;
- policy formulation and implementation;
- allocation and expenditure of VR funds; and
- participation in the One-Stop service delivery system in accordance with Title I of the *Workforce Investment Act* (WIA) and the regulatory requirements specified in 20 CFR Part 662.

RSA has long interpreted these provisions to require that the specified functions and activities be carried out by the DSU’s own staff (NPRM, 60 *Fed. Reg.* 64475, 64482 (December 15, 1995) and Final Regulations, 62 *Fed. Reg.* 6307, 6316 (February 11, 1997)). In addition, the VR unit must have clear and direct supervision over VR program staff with regard to program policy, operations, and related program matters.

The non-delegation provisions are intended to, “[strengthen] the role of the State unit by requiring that the unit have a substantial role in all decisions affecting the administration of the VR program whenever management functions within the State agency are centralized” (60 *Fed. Reg.* at 64482). Retaining these non-delegable functions within the DSU:

Ensure[s] that State agencies that consolidate staff to administer multiple State and federally funded programs do not entrust these key VR programmatic decisions to individuals who lack experience in meeting the needs of individuals with disabilities...[T]he benefits derived from DSU retention of these functions – enhanced program efficiency and effectiveness – outweigh any costs that may be associated with the non-delegation requirements in the final regulations (62 *Fed. Reg.* at 6316).

When certain functions, such as human resource development or financial management, are placed at the DSA or departmental level, it is important to assess the manner in which the DSU exercises a strong voice or provides effective input into the policy, planning, operations or similar program decisions made in these areas. While certain purely administrative functions may be performed by personnel outside the DSU, centralization of functions on the state agency level is impermissible if it results in interference with the decision-making capacity of the administrator of the DSU to direct the VR program in the state, given that the DSU has been designated as the entity responsible for administering the VR program under the VR State plan (34 CFR 361.13(b)(1)(i)).”

Summary

Eligibility determinations must be made by qualified VR counselors employed by the DSU: “Assessment for determining eligibility and priority of services” (34 CFR 361.42(a)(1)(iii). 34 CFR 361.42(a)(1) Basic requirements states that the determination of eligibility can only be made by “qualified personnel” for subsections 361.42(a)(1)(i) and 361.42(a)(1)(ii) and by “a qualified vocational rehabilitation counselor employed by the designated State unit...” for 361.42(a)(1)(iii).

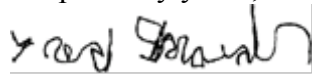
The organizational unit requirements and the eligibility requirements taken together make clear that eligibility determinations can only be made by qualified VR counselors and those counselors must be employees of the DSU. The requirements in 34 CFR 361.13(c)(1)(i) and 34 CFR 361.13(c)(2) make clear that eligibility determinations and the determination of the nature and scope of services are non-delegable functions, that is, these functions must be carried out by the DSU. And, in turn, the DSU must meet all of the requirements of 34 CFR 361.13(b), including being primarily concerned with vocational rehabilitation or other rehabilitation, having a full time director, having staff – 90 percent of whom are employed full time on rehabilitation work, and being located in an organization at a comparable level to other major organizational units of the parent agency.

We recognize that the Sunset Commission is striving to streamline the administration of a large number of state government functions. Our concern is not with the objective but its unintended consequences. Assisting individuals with disabilities, particularly those with the most significant disabilities, requires experience, expertise and a very personal deep-seated belief in the capacity of people with disabilities to work and contribute to their communities. The heart of the VR program is the one-to-one relationship that is built between a person with a disability and his or her VR counselor. The counselor is far more than a technician; VR counselors provide

encouragement, support and inspiration to people on whom the rest of society has often given up. The value of the VR program can be measured in many ways: it is estimated that for every dollar spent, \$7 to \$9 dollars is returned in savings to various government support programs; but the financial gain from helping people with disabilities return to work is only part of the story. By helping lift people out of hopelessness and into a productive, self-sufficient life, all of us are better off. As you wrestle with the very serious and complex responsibility of organizing Texas's government functions, we urge you to maintain the state's VR programs for the blind and other individuals with disabilities as distinct programs, able to respond quickly and effectively to the employment related needs of Texans with disabilities.

If I can provide any additional information, please do not hesitate to call on me.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Fred K. Schroeder", written over a horizontal line.

Fredric K. Schroeder, Ph.D.