



Highlights of the 1998 Amendments to the Rehabilitation Act Affecting Vocational Rehabilitation Rights

Rights Information

*The following information provides general guidance to vocational rehabilitation (VR) consumers about key changes made to the Rehabilitation Act, which affect VR services in Virginia. **For specific legal advice, you should consult an attorney.***

Introduction

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998, replacing the Job Training Partnership Act and other federal training programs. The Rehabilitation Act Amendments of 1998 are now included as part of the Workforce Investment Act (WIA). These amendments changed and extended programs funded under the Rehabilitation Act for five more years. The amendments consolidated several employment and training programs into a statewide system of workforce investment partnerships. The amendments also provided for staff training, technical assistance regarding VR services and eligibility, creation of local boards to identify eligible providers of youth activities, and establishment of a one-stop center on the

state level where consumers can receive intensive training services and many other activities.

This publication does not cover the many provisions of the Workforce Investment Act and does not encompass all of the amendments to the Rehabilitation Act portion of the Workforce Investment Act. This brochure is designed to provide critical information on major Rehabilitation Act provisions which directly affect consumers of VR services as provided by the Department of Rehabilitative Services (DRS) or the Department for the Blind and Vision Impaired (DBVI).

Individualized Plan for Employment

The 1998 Amendments to the Rehabilitation Act made some very positive changes to the way employment plans are developed. The changes were designed to make sure consumers have an opportunity to make informed choices about their employment goal, the services they need to reach their goal, the provider(s) of the services needed, and the methods used to obtain the services. Two major changes made by the Act were as follows:

- The plan which you and your vocational rehabilitation counselor (if you desire your counselor's help) develop that outlines planned goals and services to meet your employment goals, is now called the Individual Plan for Employment or the IPE. It used to

be called the Individualized Written Rehabilitation Plan or IWRP.

- You now have the right to develop all or part of the IPE:
 - ◇ by yourself without any help from a VR counselor;
 - ◇ jointly with help from a VR counselor;
 - ◇ with technical assistance from a source outside the VR agency; or
 - ◇ you may choose to have your representative develop the plan on forms provided by the VR agency without their assistance.

The important thing is that you, as the consumer, have a right to choose how you wish to develop the plan. However, your plan must be approved by your VR counselor who will check to be sure that your plan complies with federal and state law, regulation, and policy. Both you and your counselor must sign the IPE and any future changes to the IPE.

Eligibility

The 1998 Amendments provided for automatic eligibility for VR services to persons who are SSI (Supplemental Security Income) and SSDI (Social Security Disability Insurance) recipients.

However, the amendments allow the VR agency to challenge this automatic eligibility if it can show by *clear and convincing evidence*, that a SSI or SSDI recipient is not capable of benefiting from VR services in terms of achieving a vocational goal due to the severity of his/her disability.

The clear and convincing evidence standard is the most difficult standard to meet for the VR agency. The VR agency must show that after considering a consumer's abilities, interests, capabilities, assessments, evaluations, and trial work experiences, with appropriate supports, that the consumer cannot benefit from VR services in terms of achieving an employment outcome.

Informed Choice

The 1998 Amendments broadened the existing language which states that consumers should have a vital part in making meaningful choices based on information about how to select an employment goal, the services to be provided, the providers of those services, and the methods used to obtain those services. A consumer can exercise his/her right to choose throughout the VR process (See VOPA brochure on Informed Choice for additional information.)

Individual with a Significant Disability

The 1998 Amendments changed the term “individual with a most severe disability” to “individual with a significant disability.” This term still applies to persons who require multiple services over a long period of time and who have one or more functional limitations. What is considered “a most significant disability” is determined on a state-by-state basis and should be included in the VR agency’s Policy and Procedure Manual and in the agency’s annual State Plan.

Transition Services

Transition services refer to the coordinated set of activities to prepare students with disabilities for life after high school or other secondary school experiences. Transition services are designed to help students who are pursuing post-secondary education (college), employment, continuing and adult education, adult services, independent living services, and/or community participation.

The 1998 amendments encourage state VR agencies to assist schools in the area of transition services. Students age 14 and above should strongly consider involving the VR agency in their transition planning activities. The VR agency may serve as a consultant to the student’s Individualized Education Program (IEP) team in the school system and if the student’s needs are complex and/or if

the student is determined eligible for VR services, the VR agency may be responsible for providing and paying for vocationally related transition services.

The school system is responsible for contacting agencies which may be able to help coordinate transition services. If your school system does not call the VR agency, you or your parents can call DRS or DBVI directly and apply for services or request consultation.

State Rehabilitation Council

The 1998 Amendments changed the State Rehabilitation Advisory Council's name to the State Rehabilitation Council (SRC). Before appointing members to the SRC, the Governor must solicit recommendations for council members from a wide variety of organizations interested in individuals with disabilities. Minority populations must be represented on the SRC to the greatest extent possible. The SRC must also jointly develop, review, and approve state goals and priorities in providing VR services.

Comparable Access

The 1998 Amendments make it clear that federal agencies are required to obtain, maintain, and use electronic and information technology that provides individuals with disabilities comparable access to what is available to individuals without disabilities.

Comparable Services and Benefits

The 1998 Amendments add a requirement that the Governor, in consultation with other state agencies, including the state's workforce investment system, develop interagency agreements or other means to ensure that VR services are provided more efficiently and comprehensively to consumers.

Mediation

The 1998 Amendments required that states put in place mediation procedures to resolve disputes between a consumer and VR counselor. The process should be available any time a fair hearing is requested. However, mediation is voluntary. Therefore, while it can be requested, neither party is required to participate. The process cannot be used to deny or delay the right of a consumer to have a fair hearing or pursue legal action under the Rehabilitation Act. All information shared during mediation is confidential and cannot be used in a subsequent hearing or litigation. The hearing is conducted by a qualified and impartial mediator who is trained in mediation techniques and who is not an employee of the VR agency. The state bears the cost of the hearing.

Appellate Review

The 1998 Amendments to the Act gave consumers the right to request a fair hearing to review adverse decisions

of the VR agency involving provision of vocational rehabilitation services. This request for a hearing must be made within 60 days of the date when the consumer realizes that a resolution with the VR agency cannot be reached. A fair hearing must be held within 45 days of the date when the fair hearing is requested. The fair hearing officer makes a written decision within 30 days of the date of the hearing.

If the consumer disagrees with the decision of the fair hearing officer, the consumer may appeal the decision within 20 days of the date of the decision. This appeal is made to a designated state official in the Governor's Office and cannot be delegated to anyone in the VR agency. The reviewing official in the Governor's Office may not change any part of the fair hearing decision that is favorable to the consumer unless the reviewing official can show by clear and convincing evidence that the decision of the fair hearing officer is contrary to the VR agency's State Plan, the Rehabilitation Act, or that the decision is inconsistent with state or federal laws or regulations.

If the consumer disagrees with the decision of the reviewing official, he/she has the right to appeal the decision to any state or federal court with authority to review the decision. The review can consist not only of the decision and evidence presented to the reviewing official, but may also include any additional evidence the consumer believes relevant to the case. The court will review the evidence presented and render a decision

based on a preponderance of the evidence or whether it is more likely than not that there was a violation of the consumer's right to vocational rehabilitation services under the Act.

Resources

Virginia Office for Protection and Advocacy (VOPA)
202 N. Ninth Street, 9th Floor
Richmond, VA 23219
(800) 552-3962 (toll-free in Virginia)
(804) 225-2042 (Voice/TTY)

Contact VOPA for additional information on the agency's Client Assistance Program (CAP). CAP can assist eligible individuals with disabilities with problems in the vocational rehabilitation process from application to employment. CAP can explain a client's rights and responsibilities and answer questions about services and benefits available under the Rehabilitation Act, including Independent Living. CAP can help resolve problems with a client's counselor or case manager, mediate disagreements about services, provide information on additional resources, and represent clients who are denied services or provided inappropriate services. Information on our CAP and VOPA's other programs can also be obtained at our web site:
www.vopa.state.va.us.

Department of Rehabilitative Services (DRS)
P. O. Box K-300
8004 Franklin Farms Drive
Richmond, VA 23288-0300
(800) 552-5019 (toll-free)
(804) 662-7000 (Voice/TTY)

DRS provides vocational rehabilitation services to eligible individuals with disabilities who require these services in order to obtain, maintain, or advance in employment.

Department for the Blind and Vision Impaired (DBVI)
397 Azalea Avenue
Richmond, VA 23227
(800) 622-2155 (toll-free in Virginia)
(804) 371-3140 (Voice/TTY)

DBVI provides vocational rehabilitation services to eligible individuals who are blind, deafblind, or vision impaired who require these services in order to obtain, maintain, or advance in employment.

**Parent Educational Advocacy Training Center (PEATC)
6320 Augusta Drive, Suite 1200
Springfield, Virginia 22150
1-800-869-6782 (toll-free)**

PEATC, which is federally funded, provides information, referral, technical assistance, and training to families with children with disabilities and professionals. This includes information concerning community resources and referrals to service providers, including transition services for students with disabilities, which may include vocational services.

Virginia Office for Protection and Advocacy

Richmond and Central Offices

Ninth Street Office Building
202 North Ninth Street, Ninth Floor
Richmond, Virginia 23219
800-552-3962 (Toll-Free/Voice & TTY)
804-225-2042 (Voice & TTY)
Fax: 804-225-3221

Staunton Office

114 MacTanly Place
Staunton, Virginia 24401

Virginia Beach Office

287 Independence Boulevard, Suite 120
Virginia Beach, Virginia 23462

For more information about VOPA programs, investigations, publications, and upcoming events, log onto our web site at: www.vopa.state.va.us

For other disability agencies visit the Virginia's Disability Services web site at: www.vadsa.org

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