

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202-2800

TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-24-04
DATE: August 5, 2024

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
STATE DIRECTORS OF SPECIAL EDUCATION
CONSUMER ADVOCACY ORGANIZATIONS

SUBJECT: Requirements and Considerations for the Provision of Out-of-State
Services for the Benefit of VR Program Recipients

PURPOSE:

The Rehabilitation Services Administration (RSA) within the U.S. Department of Education's Office of Special Education and Rehabilitative Services has received inquiries requesting clarification regarding whether State vocational rehabilitation (VR) agencies may support the choice of recipients of VR services to attend out-of-State postsecondary training, including programs that provide disability-specific supports, training, or accommodations. RSA issues this technical assistance circular (TAC) to clarify State VR agencies' responsibilities and the role that State VR agencies may play in supporting informed choice for recipients of VR services, including postsecondary education, and providing out-of-State services that meet their individualized needs in accordance with their signed Individualized Plan for Employment (IPE). By optimizing flexibility in policies and maximizing investments in the provision of high-quality training and services best suited to the needs and available options open to recipients of VR services, State VR agencies can promote sustained engagement and greater participant satisfaction and maximize quality services leading to the achievement of competitive integrated employment, independence, and self-sufficiency.

TECHNICAL ASSISTANCE:

Requirements

Informed Choice and Nature and Scope of Services

Under Section 102(b)(3)(B) of the Rehabilitation Act of 1973 (Rehabilitation Act) —

“An [IPE] shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services...”

In accordance with 34 C.F.R. § 361.50(a), VR agencies must develop and maintain written policies covering the nature and scope of each of the VR services specified in 34 C.F.R. § 361.48(b) and the criteria under which each service is provided. While not establishing any arbitrary limits on the nature and scope of VR services to be provided to the individual, the policies must—

- Ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IPE; and
- Be consistent with the individual's informed choice.

With respect to out-of-State services, State VR agencies may establish a preference for in-State services, so long as the preference does not effectively deny an individual a necessary service that may be available out-of-State.¹ State VR agencies may not establish policies that effectively prohibit the provision of out-of-State services.

Costs and Rates of Payment

If a VR recipient chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, State VR agencies are not responsible for those costs in excess of the cost of the in-State service (34 C.F.R. § 361.50(b)(1)). However, when an in-State service would not meet an individual's rehabilitation needs in the same way that an out-of-State service would, there is nothing in the Rehabilitation Act or its VR program regulations to prohibit the VR agency from incurring the additional costs; in fact, 34 C.F.R. § 361.50(b)(2) prohibits the VR agency from adopting policies that effectively deny the provision of out-of-State services. Furthermore, a State VR agency may not apply financial needs tests or require participation in the cost of VR services as a condition for providing VR services of any kind, including out-of-State services, to individuals with disabilities determined eligible for Social Security benefits under Titles II and XVI of the Social Security Act (34 C.F.R. § 361.54(b)(3)(ii)).

Finally, under 34 C.F.R. § 361.50(c), State VR agencies must establish and maintain written policies to govern the rates of payment for all purchased VR services. These policies may include rates of payment for postsecondary or other programs that provide disability-specific supports or training. In establishing a fee schedule designed to ensure a reasonable cost to the program for each service, State VR agencies must ensure that the schedule is not so low as to effectively deny an individual a necessary service. In addition, the fee schedule must permit exceptions so that an individual's needs can be addressed. State VR agencies may not place absolute dollar limits on specific service categories or on the total services provided to an eligible individual.

Considerations

State VR agencies should exercise flexibility related to the provision of out-of-State services to address the unique needs of the individuals with disabilities they serve, including students with disabilities, when implementing the above statutory and regulatory provisions on informed choice, nature and scope of services, and the costs and rates of payment for services. Many compelling reasons exist for providing out-of-State services to recipients of VR services so that they can maximize every opportunity to achieve high quality employment. The following paragraphs illustrate some of the disability and vocational needs State VR agencies should consider to best support individuals with disabilities to achieve competitive integrated employment, in part, through the provision of out-of-State services.

While State VR agencies may establish a preference for in-State services, in accordance with 34 C.F.R. § 361.50(b)(1) there may be instances when an in-State service would not meet an individual's disability needs in the same way as an out-of-State service. For example, some

¹ 34 C.F.R. § 361.50(b)(1).

postsecondary educational institutions have specialized programs to meet the disability needs of VR participants. Though in-State postsecondary programs serving the general student population may meet certain of these disability needs, they may or may not meet all the individualized needs of a VR participant. When the identified disability needs of the individual cannot be met effectively through an in-State program, State VR agencies may support an individual in an out-of-State program, even at an additional cost because there is no prohibition in either the Rehabilitation Act or its VR program regulations against doing so. Out-of-State services may include postsecondary institutions designed to provide barrier-free environments for individuals who are deaf, consistent with their communication preferences, or programs designed to address the specific needs of disability groups (e.g., individuals with autism, learning disabilities, or intellectual disabilities) in ways that are not available from in-State postsecondary education programs. Other examples of disability-specific training programs include rehabilitation centers for individuals who are DeafBlind or orientation and adjustment centers for individuals who are blind or visually impaired.

Some out-of-State programs offer pre-employment transition services to students with disabilities with unique disability needs. For example, if a student has specific disability-related needs when participating in required pre-employment transition services that can be addressed best in an environment that supports those needs in an out-of-State program (e.g., residential training centers for individuals who are blind, visually impaired, or DeafBlind), or that are available at a time when in-State services may not be available (e.g., summer months), then State VR agencies may consider providing those services along with allowable services needed to access the pre-employment transition services identified on an IPE for VR eligible students with disabilities using funds reserved for pre-employment transition services.

In addition, State VR agencies should consider the individual's unique vocational needs when developing the IPE and determining if out-of-State services best meet those needs because VR services must be provided in accordance with the individual's signed and approved IPE as described in 34 C.F.R. §§ 361.45 and 361.46. If a VR participant's course of study or degree needed to meet the employment goal specified on the IPE is not available in an in-State postsecondary program or institution of higher education, then the VR agency must consider out-of-State alternatives if that is the only methodology for providing VR services to achieve the employment outcome agreed by both the eligible individual and the VR counselor on the signed and approved IPE in accordance with 34 C.F.R. §§ 361.45 and 361.46 upon. For example, if no in-State institution of higher education offers an academic course of study or degree needed to meet an individual's employment goal identified on the signed and approved IPE, such as a specialized pharmaceutical degree meeting recognized accreditation standards, or an advanced degree such as a doctorate degree in a new and emerging field like regenerative medicine, then State VR agencies must support an individual at an out-of-State postsecondary institution since that is the only service that will enable the individual to achieve the agreed-upon employment outcome. In addition, the quality of a reputable program offered out-of-State may better position the individual for the successful achievement of employment. If a VR participant has been accepted into a prestigious out-of-State college or university that is recognized as a recruitment source for positions in renowned industries or businesses that offer high quality employment and career pathways, then State VR agencies should support a participant's choice to attend such an institution.

The benefits of out-of-State services for individuals with disabilities may outweigh the financial impacts of any additional costs associated with these services. When determining the costs of in-State versus out-of-State programs, State VR agencies should consider all costs required to support a recipient of VR services in the program. For example, in some instances, supporting an individual with a disability in an in-State postsecondary institution serving the general student

population may involve additional expenses related to the individual's access or disability-related needs (e.g., sign language interpreter, personal attendant services, and college programs for students with autism). Similarly, if an out-of-State training program offers services that are uniquely suited to the VR participant's disability needs (e.g., an orientation and adjustment program for individuals who are blind or DeafBlind) or are not available consistent with an individual's choice or identified needs in an in-State environment, then, State VR agencies may support the individual in an out-of-State training program, which may or may not require an additional expense.

State VR agencies' policies should provide ample flexibility to fully meet recipients' disability needs and required supports. For instance, establishing a policy requiring an individual to first earn a degree at a two-year community college and then complete a bachelor's degree through a transfer to a four-year institution could create unnecessary burden for the individual. As an example, this policy may require the individual to re-establish necessary supports, especially if an out-of-State alternative exists where the individual could complete a bachelor's degree at a single institution.

Additionally, State VR agencies should consider including reasonable costs associated with an individual's participation in out-of-State services such as the cost of transportation. For example, if a student attends an out-of-State college, it would likely be reasonable to provide transportation costs to and from the college, including those associated with scheduled semester or quarter breaks.

State VR agencies also should consider collaborating with State VR agencies in other States when providing individuals out-of-State services, given that it is allowable for State VR agencies in different States to simultaneously provide VR services to eligible individuals under respective IPEs (see [RSA-TAC-12-04](#)). For example, the need for such collaboration can arise when an individual receives financial assistance from the State VR agency in the State where they reside to attend a postsecondary education institution in another State. While attending the college or university, the individual may require other services, including, but not limited to, orientation and mobility training, assistive technology devices and training in their use, reader or interpreter services, and personal assistance services. In cases where such additional services are necessary, the State VR agency located in the State where the individual is attending college is often in closest proximity to the individual and possesses the knowledge of the sources available in the State to provide such services. Thus, it is this State VR agency that is in the best position to deliver the effective and timely services that will enhance the individual's educational experience, better enabling them to achieve an employment outcome.

Finally, State VR agencies should inform individuals with disabilities of their due process rights as described in Section 102(c) of the Rehabilitation Act and the availability of services from the Client Assistance Program under Section 112 if the individual and the VR agency are in dispute over the services to be provided, including the provision of out-of-State services.

SUMMARY:

Because the signed and approved IPE is the vehicle through which all VR services are provided, including out-of-State services, in accordance with 34 C.F.R. §§ 361.45 and 361.46, State VR agencies should provide VR services that best meet the unique disability and vocational needs of individuals with disabilities and maximize employment opportunities for such individuals, even if those services are located out-of-State. State VR agencies have flexibility to implement policies that take into account informed choice and individualized VR service needs of those

they serve when providing VR services and supports to recipients choosing out-of-State postsecondary education and occupational training or disability-related training programs. Additionally, students with disabilities may benefit from the receipt of out-of-State pre-employment transition services, as appropriate. Supporting specialized out-of-State services and programs can be done in collaboration with other State VR agencies and may make the critical difference in an individual remaining engaged in the VR process and achieving high-quality employment, self-sufficiency, and independence.

INQUIRIES:

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CITATIONS:

- Rehabilitation Act of 1973, Section 102(b)(3)(B) and (c)
- State Vocational Rehabilitation Services Program Regulations at part 361, 34 C.F.R. §§ 361.45; 361.46; 361.48(b); 361.50(a), (b), and (c); 361.54(b)(3)(ii)

Danté Q. Allen
Commissioner

cc: Counsel of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
National Disability Rights Network
National Coalition of State Rehabilitation Councils
National Association of State Directors of Special Education