

PL 102-569: The Rehabilitation Act Amendments of 1992

.... We can be proud of this landmark piece of legislation that will ultimately facilitate employment outcomes for individuals with the most severe disabilities. This law will afford people with disabilities the opportunity to take advantage of the Americans with Disabilities Act. These Amendments pull together the best of what we know about how to assist people with disabilities and their families. The rest is up to us....

- Dr. Paul Wehman, Director RRTC

The Rehabilitation Act Amendments of 1992 were signed by the President on October 29, 1992 and became Public Law 102-569. These amendments are much more than a status-quo reauthorization or continuation of the Federal/State Rehabilitation Program. Substantial adjustments are made in the principles, purpose, process, and outcomes of the Rehabilitation Program to support persons across the full range of type and extent of disability to attain and maintain employment outcomes appropriate to their interests and abilities.

The Amendments are guided by the presumption of ability. A person with a disability, regardless of the severity of the disability, can achieve employment and other rehabilitation goals, if the appropriate services and supports are made available. Therefore, the primary responsibilities of the vocational rehabilitation system are to:

- Assist the individual with a disability to make informed choices about potential employment outcomes that result in integration and inclusion in the community.
- Develop an individualized rehabilitation program with the full participation of the person with a disability.
- Match the needs and interests reflected in the individualized programs with the appropriate services and supports including rehabilitation technology, supported employment and others.
- Proactively foster cooperative working relationships with other agencies and programs, including local education authorities, to unify the service system.
- Emphasize the quality of services and the accountability that service representatives have to honor the dignity, participation, and growth of persons with disabilities as their employment interests develop over time.

There is now a consistent set of public legislation through the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and the Rehabilitation Act Amendments of 1992 providing guidance to employers, education authorities, rehabilitation service managers and providers, and others in how to support persons with disabilities. The Rehabilitation Act Amendments of 1992 support the actual service systems through which employers can find assistance and expertise in identifying and completing the reasonable and appropriate job accommodations called for in the ADA. They establish a basis in the adult service system for accomplishing the transition preparation, planning, and implementation activities found in the IDEA. Finally, the Rehabilitation Act Amendments put the abilities and choices of persons with a disability first and challenge the services system and the greater community to support their efforts to work, live, and participate in the community. This newsletter will describe a number of the major components of the Rehabilitation Act Amendments in the Title I state grant program for vocational rehabilitation services and the Title VI, Part C supported employment services program.

- Grant Revell, Director
Virginia Commonwealth University's
Technical Assistance Center on Supported Employment

**A Joint Publication by
The Rehabilitation Research and Training
Center on Supported Employment,
Virginia Commonwealth University's Supported
Employment Technical Assistance Center,
and
The United Cerebral Palsy Association, Inc.**



Value-Based Framework

The statement of purpose and policy is a reaffirmation of the precepts of the Americans with Disabilities Act, which has been referred to as the 20th century emancipation proclamation for individuals with disabilities. It is the Committee's intent that these principles guide the policies, practices, and procedures developed under all titles of the act...The terms "INCLUSION and INTEGRATION" are included in this section of the bill in the findings, purpose, and policy sections of Title 1, and in numerous other places throughout the Act. The Committee intends these references to reinforce the principle that individuals with disabilities, regardless of the nature, type, or severity of disability, should have the same opportunity as their nondisabled peers to experience and enjoy working, leisure time activities, and other life experiences in our society (Senate Report 102-357. p. 14-15.)

This language from the Senate Report creates a value-based framework to focus all programs authorized through and funded under the Rehabilitation Act. More than any other legislation since the enactment of the Americans with Disabilities Act in 1990, the Rehabilitation Act has taken the principles and policies of the ADA and translated them into statutory language. The law now recognizes that disability is a "natural part of the human experience" and "in no way diminishes the right" of individuals to live independently, enjoy self-determination, make choices, contribute to society, pursue meaningful careers, and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.

Presumption of Ability

It is important to realize that the reauthorization of the Rehabilitation Act assumes that people with disabilities can work. Previously, an individual had to have evaluations to determine his/her "rehab, potential" and the "feasibility" for "employability." Often these evaluations concluded that persons with the most severe disabilities were not eligible for services. However, since advances in technology and supported employment, disability can no longer be equated with an inability to work. In assuming that people with disabilities can work, several critical changes will occur.

- The notion of feasibility is removed.
- The rehabilitation counselor must demonstrate that no employment outcome is possible in order to determine a person ineligible.
- The burden of proof for accessing the system shifts from the individual to the rehabilitation system.

Eligibility: Accessing the System

A two part process essentially determines a person's eligibility for rehabilitation services. First, does the person have a disability? Second, does he/she require assistance

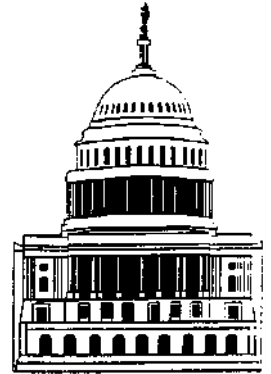
from the vocational rehabilitation system to achieve an employment outcome? Presumption of ability changes the "old way" of an "evaluation of rehabilitation potential" to an assessment of eligibility and rehabilitation needs.

Eligibility determinations must now focus first on the use of existing data, particularly on information provided by the individual with a disability, his/her family, or advocates. Other sources may include education agencies, social security agencies, the individual's personal physician, previous or current employer(s), community organizations such as UCP affiliates, and any organization or person referring the individual. If existing data is not available, insufficient, or outdated, a preliminary assessment may be provided to include the provision of rehabilitation goods and services such as supported employment services, personal assistance services, and rehabilitation technology services.

A comprehensive assessment may occur if additional information is needed. However, the statute limits the extent of any comprehensive assessment to specific information needed to develop a program of services. Finally, and most importantly, a decision regarding eligibility must now be made within 60 days. A short extension may be provided if mutually agreed upon between the individual with a disability and the vocational rehabilitation counselor.

In other words, people are presumed able to work, unless the counselor can UNEQUIVOCALLY demonstrate that no employment outcome is possible.

Choice



Supported employment service providers have been hearing for years from persons with severe and multiple disabilities that they **MUST** be able to choose their own service providers, their own jobs, their own supports, and their own funding source. Now, for the first time, there is legislation that begins to answer the issue of choice. The new Rehabilitation Act Amendments of 1992 clearly reflects values aimed at empowering persons with disabilities. The following regulations will ensure that individuals with severe and multiple disabilities have **CHOICE AND CONTROL** over their rehabilitation services.



Checklist of "Choice Regulations"

THE IWRP MUST....

- ✓ be jointly developed between the individual with the disability and the counselor.
- ✓ be designed to achieve the employment objectives of the individual with the disability.
- ✓ be consistent with the individual's strengths, priorities, abilities, and capabilities.
- ✓ be designed to include a statement, in the individual's words, describing how he or she was informed of and involved in choice related to:
 1. employment goals
 2. objectives
 3. services
 4. service providers
 5. methods used to procure or provide services.
- ✓ be designed to include information regarding related services and benefits.
- ✓ be provided in the language or mode of communication of the individual.
- ✓ be agreed upon by the individual with the disability and the counselor.
- ✓ be signed by the individual with the disability and the counselor.
- ✓ be copied to ensure that the individual has his/her own copy of the final document.



Supported Employment Programs

Supported Employment provides a means for individuals with severe disabilities to obtain and maintain community integrated competitive employment. P.L.102-569 includes many definitions related to Supported Employment Programs. The statute defines supported employment, supported employment services, ongoing support services, and extended services. The following table presents some of the key definitions in the Rehabilitation Act of 1992 related to supported employment programs.

P.L. 102-569: Supported Employment Definitions

SUPPORTED EMPLOYMENT is...

- competitive work in integrated work settings;
- for persons with the MOST severe disabilities;
- for whom competitive employment has not traditionally occurred;
- or for whom competitive employment has been interrupted or intermittent as a result of a severe disability: and
- who, because of the severity of their disability, need intensive support services; or
- extended services in order to perform such work.
- This term also includes transitional employment for persons with the most severe disabilities due to mental illness.

SUPPORTED EMPLOYMENT SERVICES are defined in this statute as ongoing support services and other appropriate services, for individuals with the MOST severe disabilities. They are...

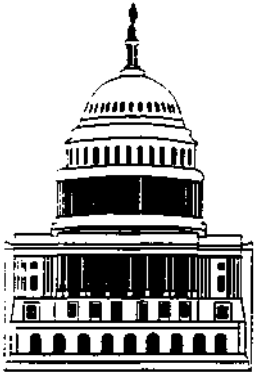
- any service(s) that assist(s) an individual in entering or maintaining integrated, competitive employment:
- based on the needs of the eligible individual, as specified in an IWRP: and
- provided by the designated State unit for a period of time not to exceed 18 months; or
- under special circumstances, may be extended beyond 18 months if the eligible individual and the rehabilitation counselor jointly agree to extend the time in order to achieve the rehabilitation objectives in the IWRP.

ONGOING SUPPORT SERVICES are provided to individuals with the most severe disabilities and...

- occur at least twice monthly to assess the employment situation at the job site: or at the request of the client, off site:
- and based on the assessment, provide for the coordination or provision of intensive services, at or away from the job site. that are needed to maintain employment stability: and
- may include such things as a supplementary assessment: intensive job-site training: job development and placement: social skills training: observation or supervision of the individual: contact with the employers, individual, parents, family members. or advocates: facilitation of natural supports: any other service identified in Section 103: or a service similar to another service described in this subparagraph.






EXTENDED SERVICES include ongoing support services and other appropriate services needed to support and maintain an individual in supported employment. They are...

- any service(s) needed to support an individual in maintaining integrated, competitive employment:
- provided by any appropriate resource such as a State agency, a nonprofit private agency, or an employer after the individual has transitioned from support provided by the designated State vocational rehabilitation unit;
- based on the needs of an eligible individual as specified in an IWRP which must include a statement of the source of the extended services.
- If it is not possible to identify such a source, a statement may be included describing the basis *"for concluding that there is a reasonable expectation that such sources will become available."* Extended services may include natural supports [Sec. 635(b)(6)(C)(iii)].



Does Supported Employment Need "Fixing?"

In spite of supported employment's national success, there continues to exist a number of implementation issues. The revised supported employment regulations, as published in the Federal Register on June 24, 1992 [Vol. 57, no. 122: pp. 28432-28442], specifically addressed some of these concerns. Similarly, the 1992 Rehabilitation Act Amendments have made some significant changes in an attempt to "FIX" these implementation issues. The following table presents some of the major areas of concern and the reauthorized Act changes.

PROBLEM	AMENDMENT CHANGES
<p>Programs continue to avoid selecting those individuals with the most severe disabilities.</p>	<p>The definition of Supported Employment now includes the following:</p> <p> Greater emphasis has been placed on terms that describe the individuals for whom supported employment was designed to serve. The new definition now uses the word "<i>MOST</i>" in front of the word severe.</p> <p> The word "<i>intensive</i>" has been added to the definition for emphasis and to describe the type of supported employment services or extended services that an individual needs to achieve employment. <i>NOTE: The Committee was very concerned that there be NO specific numerical requirements or other arbitrary requirements used in the regulations (Senate Report 102-357, p.22).</i></p>
<p>People with severe physical, dual sensory, or other multiple disabilities are having difficulty accessing local services across the country.</p>	<p>A statutory definition of '<i>ongoing support services</i>' has been added to the Act.</p> <p> These services have been defined to include almost anything required by the individual receiving services such as <i>transportation, communication, personal assistance services, rehabilitation technology, job redesign, environmental adaption, social skills training, counseling or other emotional supports, and family support.</i> (Senate Report 102-357. p.24)</p> <p> The inclusion of natural supports has taken on a broad definition and is <i>meant to include having a supervisor, co-worker, or other employer(ee) provide supervision and support at the worksite: using college students, friends or volunteers/mentors from work or the community to provide needed sendees or supports: or using family members in a support role.</i> (Senate Report 102-357, p.24)[[Emphasis added]</p>
<p>Presently, there exists a lack of extended service providers that can be identified from the onset of employment</p>	<p>Much of the statutory' definition governing <i>extended services</i> remains the same with two important exceptions.</p> <p> If it is not possible to identify a provider of extended services when the IWRP is written, a statement may be included that states why there is reasonable expectation that such a source will be available. This provision also indicates that extended services may include natural supports. The combination of these amendments will assist individuals with the most severe disabilities who have frequently been denied access to supported employment.</p>



Rehabilitation Technology

Rehabilitation Technology refers to a broad range of services and devices. The Rehabilitation Act Amendments uses the term to mean:

- all activities previously incorporated under the term "rehabilitation engineering".
- assistive technology devices, and
- assistive technology services.

Achieving the Rehabilitation Goal

The Rehabilitation Act mandates that the rehabilitation system provide rehabilitation technology to an individual if it is needed to achieve his/her rehabilitation goals. This makes technology exempt from the comparable services and benefits requirement. Most other services under Section 103 of the Act is subject to what is called a "search for similar benefits." A search for similar benefits means that the rehabilitation system does not have to provide a service until every other possible funding source has been exhausted. Therefore, a rehabilitation counselor must provide technology to an individual with a severe disability who needs it to achieve his/her employment and other rehabilitation goals. The consumer can not be forced to wait through a lengthy or significant delay before the provision of services while other funding sources are exhausted.

For example. Amy's employment goal was to become employed as a data entry specialist for an insurance company. She had severe cerebral palsy and was unable to communicate verbally with her co-workers. Amy asked her rehabilitation counselor to purchase a "Touch Talker" as a job accommodation. The device was needed for Amy to fully meet her rehabilitation goals, the counselor provided the technology.

Individualized Written Rehabilitation Program

The technology needs of an individual must be specified in the Individualized Written Rehabilitation Plan (IWRP). This includes " a statement of the specific rehabilitation technology

New State Plan Requirements for Rehabilitation Technology

1. Describe how a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process.

[Sec.101(a)(5)(C)(i)]

2. Describe how a broad range of such rehabilitation technology services will be provided on a statewide basis.

rSec.101(a)(5)(C)(ii)]

3. Describe the training that will be provided to vocational rehabilitation counselors, client assistance personnel, and other related services personnel.

[Sec.101(a)(5)(C)(iii)]

4. Describe the manner in which devices and services will be provided or worksite assessments will be made as part of the assessment for determining eligibility and/or needs of an individual.

[Sec.101(a)(31)]

services to be provided to assist in the implementation of intermediate rehabilitation objectives and long-term rehabilitation goals."

Key report language states the following:

"...the IWRP should provide for regular and periodic assessments to ensure that a match exists between the supports, the technology, and the current and changing needs of the individual who will be using the technology, as well as other people involved in the provision of services who require the information..."

(Senate Report 102-357. p.39.)

Transition



The Rehabilitation Act Amendments of 1992 states that...

"The term 'transition services' means a coordinated set of activities for a student,

designed within an outcome-oriented process, that promotes movement from school to post school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

This definition of transition services duplicates the one included in the Individuals with Disabilities Education Act (IDEA). It is important to note, since numerous amendments were added to P.L. 102-569 related to transition. The amendments recognize that many students with disabilities will exit the school systems requiring rehabilitation services. Of critical importance, the new regulations mandate a state plan requirement for rehabilitation programs. The state agency must specifically address development of policies that will be implemented to assure that rehabilitation agencies coordinate with state education agencies, in order to assure that students exiting the schools who require rehabilitation services receive those services with no break in service. Thus an eligible individual's IWRP should be completed BEFORE the individual leaves the school system. The transition provisions added to the Act do not shift the burden for transition planning from education to rehabilitation. Instead, they will force coordination and collaboration between the two systems so there will be no gap in service for eligible students.

New State Plan Requirements for Transition

GOALS AND PUBLIC EDUCATION. Each state plan must:

...contain plans, policies, and procedures to be followed (including entering into a formal interagency cooperative agreement...with education officials responsible for the provision of a free appropriate public education to students who are individuals with disabilities) that are designed to:

- A.) facilitate the development and accomplishment of -
 - (i) long-term rehabilitation goals;
 - (ii) intermediate rehabilitation objectives; and
 - (iii) goals and objectives related to enabling a student to live independently before the student leaves a school setting, to the extent the goals and objectives described in clause (i) through (iii) are included in an individualized education program of the student, including the specification of plans for coordination with the educational agencies in the provision of transition services;
- B.) facilitate the transition from the provision of a free appropriate public education under the responsibility of an educational agency to the provision of vocational rehabilitation services under the responsibility of the designated State unit, including the specification of plans for coordination with educational agencies in the provision of transition services authorized under section 103(a)(14) to an individual, consistent with the individualized written rehabilitation program of the individual: and
- C.) provide that such plans, policies, and procedures will address -
 - (i) provisions for determining State lead agencies and qualified personnel responsible for transition services;
 - (ii) Procedures for outreach to and identification of youth in need of such services: and
 - (iii) a timeframe for evaluation and follow-up of youth who have received such services (Sec. 101(a)(24)).



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Virginia Commonwealth University's Rehabilitation Research and Training Center on Supported Employment and The Supported Employment Technical Assistance Center

The Virginia Commonwealth University Rehabilitation Research and Training Center on Supported Employment, funded in 1988 by the National Institute on Disability and Rehabilitation Research, provides research, training, and leadership on supported employment for citizens with developmental and other severe disabilities. Virginia Commonwealth University's Supported Employment Technical Assistance Center assists states in supported employment service delivery and consumer outcomes via cooperative technical assistance planning and implementation. For further information write to VCU-RRTC, VCU Box 2011, Richmond, VA 23284-2011. Funding for this publication is provided by the U.S. Dept. of Education, Grant #H-133B80052-92 and #H-128A00504-92.

We would like to extend a special thank you for this newsletter to Christopher Button from the United Cerebral Palsy Association, Inc. (UCPA). Chris is the Director of Governmental Affairs for UCPA and recently wrote an article on the Rehabilitation Act Amendments for Word from Washington which is a UCPA publication. Our RRTC/SE TAC newsletter content is taken from this publication. If you would like a reprint of Word from Washington (October/November, 1992), please call Gretchen Olson at 1-202-842-1266.

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Announcing A New Manual!

*Finding the Common Denominator: A Supported
Employment Guide to Long-Term Funding Supports and
Services for People with Severe Disabilities*

This manual is designed as a practical guide to identifying funding and other resources for the provision of extended service/long-term supports in supported employment. It is based on information provided by persons working at both the state and local levels from across the country and provides specific examples of a variety of long-term resources now in use. The manual contains numerous follow-up contacts and references, and it is intended for use at both the state systems, community, and participant levels. State agency persons, community-based managers, providers, and users of supported employment services who are seeking concrete examples of potential long-term support options will find this manual useful.

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