

STATE OF ARKANSAS



Asa Hutchinson
Governor

Department of Career Education
Arkansas Rehabilitation Services

Charisse Childers, Ph.D.
Director

Alan McClain, *Commissioner*

November 14, 2018

Re: Summary of Public Comments
Revisions to Field Services Policy and Procedure Manual

1. Commenter's Name: Credonna Miller

Commenter's Business/Agency: Saline Audiology

Summary of Comment: Credonna Miller is a doctor of audiology who practices in Benton and Hot Springs Village. She stated that it is unnecessary for a vocational-rehabilitation client to see a medical doctor prior to being approved by Arkansas Rehabilitation Services for a hearing aid. Dr. Miller stated that doctors of audiology can screen clients for medical issues directly, without an initial referral to a physician.

Agency's Response to Comment: ARS recognizes the clinical training and diagnostic ability of a doctor of audiology. However, it is in the best interest of the agency's clients to require a medical assessment before approving the purchase of a hearing aid or similar device. A medical assessment (by an otologist, otolaryngologist, ENT, or primary-care physician) would ensure that issues like ear infections are treated without recourse to a hearing aid; likewise, the assessment would confirm that a hearing aid is recommended in the absence of a medical issue causing the hearing loss.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. No changes were made as a result of the comment.

2. Commenter's Name: Tom Masseur, Executive Director of Disability Rights Arkansas

Commenter's Business/Agency: Disability Rights Arkansas is the non-profit organization federally designated as the Client Assistance Program/Protection and Advocacy System for individuals with disabilities in Arkansas.

Summary of Comment: 34 C.F.R. § 361.41 allows sixty days for the vocational-rehabilitation agency to determine whether an individual is eligible to receive client services. The 60-day time period is absent from Section II, p. 3 ("Referral, Application, and Assessment") of the revised policy manual.

Agency's Response to Comment: The commenter is correct that the 60-day time period for determining an applicant's eligibility was deleted from Section II, p. 3. However, this time period is referenced and discussed in Section III ("Eligibility and Ineligibility Determination").

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. No changes were made as a result of the comment.

3. Commenter's Name: Tom Masseur

Commenter's Business/Agency: Disability Rights Arkansas

Summary of Comment: 34 C.F.R. § 361.42 requires ARS to “conduct an assessment for determining eligibility and priority for services.” The revised manual states that ARS will assess all individuals applying for services, but also states that the agency will “review existing data before determining if an assessment is needed ... and if so, what type.” Section II, p. 6.

Agency's Response to Comment: The commenter is correct that a state's vocational-rehabilitation agency must assess all applicants for services in order to determine eligibility and priority.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. Section II has been revised as follows: “The counselor will review existing data before determining ~~if an assessment is needed to determine eligibility and, if so, what type of~~ assessment is needed.”

4. Commenter's Name: Tom Masseur

Commenter's Business/Agency: Disability Rights Arkansas

Summary of Comment: The section on “extended evaluation,” a VR status available if achievement of a vocational goal was uncertain for a particular client, has been deleted from the revised manual. The commenter states that clients must be afforded extended evaluation status under federal law, specifically 34 C.F.R. 361.42(f).

Agency's Response to Comment: 34 C.F.R. 361.42 (“Assessment for determining eligibility and priority for services”) was modified in August of 2016 to remove the extended-evaluation requirement. As a result, the revised manual focuses on “trial work experiences” and no longer requires counselors to consider extended-evaluation periods.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. No changes were made as a result of the comment.

5. Commenter's Name: Tom Masseur

Commenter's Business/Agency: Disability Rights Arkansas

Summary of Comment: There is a discrepancy in the manual's definition of individuals with most significant, significant, and non-significant disabilities. The manual states that the agency currently defines “non-significant disability” as a disability that seriously impairs *one* functional

capability. And the manual states that if ARS becomes subject to an order of selection (prioritizing services for individuals with the most significant disabilities), then “non-significant disability” will be defined as a disability that seriously impairs *two* functional capabilities.

Agency’s Response to Comment: The discrepancy noted by the commenter is intentional. ARS is not subject to an order of selection, and it currently serves (as its lowest priority) individuals with impairment in only one functional area. Under an order of selection, individuals with serious impairment in two functional areas will be the agency’s lowest priority of service.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. No changes were made as a result of the comment.

6. Commenter’s Name: Tom Masseur

Commenter’s Business/Agency: Disability Rights Arkansas

Summary of Comment: The revised manual states that the agency will support online courses only if “training cannot be arranged [for the client] by any other method.” The commenter states that this requirement “discourages online courses.” The commenter also states that ARS “require[es] students to pay for a semester of a training program or college prior to receiving ARS financial support.”

Agency’s Response to Comment: In-person training is preferable for a number of reasons, such as student-teacher interaction and hands-on experience. Moreover, the cost of online courses tends to exceed the cost of similar programs from public institutions in Arkansas. Counselors are therefore required to verify that the client’s course of study “cannot be arranged by any other method” before authorizing online training.

The agency is unsure which part of the revised manual prompted the comment about clients paying for a semester of training before ARS provides support. ARS is not the primary funding source for training programs, given the potential availability of federal financial aid for student-clients. But there is no requirement that ARS withhold payments until clients have paid for one semester out of pocket.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. No changes were made as a result of the comment.

7. Commenter’s Name: Tom Masseur

Commenter’s Business/Agency: Disability Rights Arkansas

Summary of Comment: 34 C.F.R. § 361.54(b)(3)(ii) states that a VR agency cannot require a client’s financial participation “[a]s a condition for furnishing any vocational rehabilitation service if the individual ... has been determined eligible for Social Security benefits”

The commenter requests that the manual “be changed to reflect the federal mandate that individuals eligible for SSI and/or SSDI benefits are exempt from financial participation in vocational rehabilitation services, including maintenance.”

Agency’s Response to Comment: The commenter is correct that VR services cannot be conditioned on the contribution of SSI or SSDI benefits toward those services. The VR service at issue here is “maintenance,” or certain financial assistance for room and board.

The revised manual states that ARS counselors “must first utilize comparable services/similar benefits such as Social Security, community resources, and consumer resources before any ARS funds can be committed for rental assistance payments.” The manual should state that if maintenance payments are otherwise authorized, Social Security benefits cannot be counted as a comparable benefit to reduce the agency’s share.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. Section VI (“Maintenance”) has been revised as follows:

“The counselor must first exhaust the assistance available through ~~the Social Security Administration~~, consumer resources and any other comparable services or benefits programs before funding maintenance support. ...

The Counselor must first utilize comparable services/similar benefits such as ~~Social Security~~, community resources and consumer resources before any ARS funds can be committed for rental assistance payments. Individuals who receive SSI or SSDI ~~cash~~ benefits are expected to use those funds for their normal living expenses, but not for payment of VR services. If an individual receiving SSI or SSDI benefits is authorized by ARS to receive maintenance support, the individual will not be required to contribute the SSI/SSDI benefits toward the maintenance support.”

8. Commenter’s Name: Tom Masseau

Commenter’s Business/Agency: Disability Rights Arkansas

Summary of Comment: The commenter states that 34 C.F.R. § 361.49(g) requires vocational-rehabilitation agencies to provide VR services to family members of clients, “if necessary ... to achieve an employment outcome” for the client. The commenter states that the manual’s “new 3 month limit placed on services to family members is too restrictive and in violation of federal regulations.”

Agency’s Response to Comment: The regulation cited by the commenter, 34 C.F.R. § 361.49, does not address services to family members. The relevant regulation appears to be 34 C.F.R. § 361.48(b)(9). ARS does not read this regulation as prohibiting a time limit on such services. However, the policy will be changed to allow for extensions on a case-by-case basis.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. Section VI (“Services to Family Members”) has been revised as follows:

“Services may include childcare (up to three months), training, transportation (up to three months), and relocation of the family to an area where work is available for the individual (up to three months). Services may be authorized for greater than three months on a case-by-case basis, as determined by the counselor in consultation with the individual and the individual’s family.”

9. Commenter’s Name: Tom Masseur

Commenter’s Business/Agency: Disability Rights Arkansas

Summary of Comment: The small-business appendix states that clients “must complete a small business plan/feasibility statement within 15 business days from RIDAC approval.” The commenter requests a “more realistic timeframe” for clients to complete their plans.

Agency’s Response to Comment: ARS agrees that a hard-and-fast deadline of 15 business days may be unrealistic.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. Appendix A (“Self-Employment/Small Business Program”) has been revised as follows:

~~“If has approved~~ Following RIDAC assessment, client completes Small Business plan/feasibility statement that includes labor market analyses, with target deadline of within 15 business days from RIDAC approval date.”

10. Commenter’s Name: Tom Masseur

Commenter’s Business/Agency: Disability Rights Arkansas

Summary of Comment: Appendix C of the revised manual applies to Community Rehabilitation Programs, which are organizations that directly provide, or facilitate the provision of, VR services to individuals with disabilities. The commenter raises three points with respect to Appendix C.

First, the commenter requests that the revised manual “explicitly state who is responsible for ensuring individuals in subminimum wage employment receive the initial and ongoing counseling” required by federal law.

Second, the commenter requests that the manual “reflect that counselors and individuals [receiving subminimum wage] work jointly to identify needed services.”

Third, the commenter notes that the manual allows for “technical assistance ... to determine if a job position meets the Competitive Integrated Employment definition,” but does not “explicitly describe the process and the standards” involved with this assistance.

Agency’s Response to Comment: As to the first comment, the manual should state that ARS will be responsible for the initial and ongoing counseling provided to individuals receiving a subminimum wage. As to the second comment, the manual should state that services are

determined through counselor-client collaboration. As to the third comment, the manual should incorporate the statutory definition of “competitive and integrated employment.” But this determination is extremely fact-sensitive, so it is inappropriate to fix agency “standards” beyond those already provided by federal law.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. In response to the first comment, Appendix C (“Community Rehabilitation Programs”) and parallel parts of Section VI (“Limitations on Subminimum Wage”) have been revised as follows:

“In addition, individuals with disabilities regardless of their age who are employed by a 14(c) must be provided career counseling and related information by ARS. These individuals must also be provided, by ARS or the CRP, information about self-advocacy, self-determination, and peer mentoring training opportunities available in the individual’s geographic area every six months for the first year they are employed, and annually thereafter. ...

A youth with a disability ... cannot start working for less than minimum wage until he/she has had the opportunity to ... [r]eceive career counseling, including information and referrals to other state and federal entities that provide employment services, from ARS.”

In response to the second comment, Appendix C has been revised as follows:

“The counselor and individual will jointly work to determine which services, including external employment services, ~~an~~ the individual may need to be successfully employed.”

In response to the third comment, Appendix C has been revised as follows:

“Prior to job placement, an ARS Counselor ... may seek ~~technical~~ assistance from the ARS Community Program Development Section ~~for an evaluation to determine if~~ as to whether a job position meets the qualifies as Competitive Integrated Employment definition as established in the regulations. As stated in 29 U.S.C. § 705(5), “competitive integrated employment” means full- or part-time work:

for which an individual is compensated at a rate that shall be not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 ... or the rate specified in the applicable State or local minimum wage law; and ... is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or ...

in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and ... is eligible for the level of benefits provided to other employees; [and]

that is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and ...

that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

11. Commenter's Name: Tom Masseur

Commenter's Business/Agency: Disability Rights Arkansas

Summary of Comment: Appendix H applies to pre-employment transition services, which are generally available to youth with disabilities. The commenter notes that in this appendix, "IEP" appears as "Individualized Education Plan" instead of "Individualized Education Program." Second, the commenter notes that Appendix H appears to provide a "bypass" to subminimum wage employment for youth with disabilities. Third, the commenter asks when forms referenced in Appendix H will be finalized.

Agency's Response to Comment: The commenter is correct that IEP in this context stands for "Individualized Education Program." As to the second comment, the "Refusal of Services" section was intended to establish a documentation procedure that applies when youths decline services. ARS did not intend this procedure to somehow authorize youths to seek subminimum-wage employment. As to the final comment, forms consistent with Appendix H are being developed, although the anticipated date of release is not known at this time.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. References in Appendix H to "Individualized Education Plans" have been changed to "Individualized Education Programs."

In response to the second comment, Appendix H has been revised as follows:

"In the event a ~~student~~/youth with a disability or, as applicable, the youth's parent or guardian, refuses ~~services~~ through informed choice to participate in services offered by ARS, and the ~~student~~/youth is known to be seeking subminimum wage employment, the transition counselor will document the refusal of services by"

12. Commenter's Name: Tom Masseur

Commenter's Business/Agency: Disability Rights Arkansas

Summary of Comment: Appendix E includes forms associated with the due-process section of the revised manual. These forms reference "Disability Rights Center" instead of the organization's current name.

Agency's Response to Comment: "Disability Rights Center" is outdated.

Were any changes made to the Proposed Rule as a result of this comment? If so, please describe. Yes. References in the due-process forms to "Disability Rights Center" have been changed to "Disability Rights Arkansas."