

# DisabilityRights

## ARKANSAS

Tom Masseur, **Executive Director**

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November 6, 2018

Alan McClain, Commissioner  
Arkansas Rehabilitation Services  
525 West Capitol  
Little Rock, AR 72201

RE: Proposed revisions to Arkansas Rehabilitation Services Policy and Procedures Manual

Dear Commissioner McClain:

On behalf of Disability Rights Arkansas, Inc. (DRA), I would like to thank you for the opportunity to comment on proposed revisions to the ARS Policy and Procedures Manual. DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) and Client Assistance Program (CAP) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law.

DRA values the effort that went into drafting the revisions to the Policy and Procedures Manual and appreciates the opportunity to provide the following comments.

### **Timeline for eligibility determination:**

DRA is concerned that the 60-day time period for determining eligibility has been removed from the manual on p. II-3. As the 60-day time period for determining eligibility is established by federal regulation (34 CFR §361.41), we request that the federally-mandated 60-day period be retained in the policy manual.

### **Assessment:**

New language regarding assessments on p. II-6 states that “ARS must conduct an assessment for determining eligibility and priority for services.” However, the following paragraph states that “The counselor will review existing data, before determining if an assessment is needed to determine eligibility and, if so, what type.”

Under 34 CFR §361.42, the state unit “must conduct an assessment for determining eligibility and priority for services.” In the revised policy manual, it is unclear whether ARS will conduct an assessment or whether the counselor retains discretion to determine whether an assessment is needed. We request that ARS’s policy be changed to confirm to the requirements set forth by federal regulation.

### **Extended Evaluation:**

The entire section on Extended Evaluation has been deleted from the policy manual (p. II-10). Under 34 CFR §361.42(f), the state unit must conduct an extended evaluation if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted. We are concerned that ARS appears to no longer provide the opportunity for Extended Evaluation and request that the policy manual include Extended Evaluation, as mandated by federal regulation.

### **Order of Selection:**

DRA appreciates the inclusion of definitions of functional capacity areas in the Order of Selection section (pp. III-4 to III-7). However, there is a discrepancy in how the priority categories are defined. In the section entitled “Description of Priority Selection” beginning on p. III-4, Priority Category I—Most Significantly Disabled is defined as an individual whose physical or mental impairment seriously limits at least three functional capabilities, Priority Category II—Significantly Disabled is defined as an individual whose physical or mental impairment seriously limits two functional capabilities, and Priority Category III—Non-Significantly Disabled is defined as an individual whose physical or mental impairment seriously limits one functional capability. In the section entitled “Priority of Categories to Receive VR Services Under the Order” on p. III-6, individuals in Priority Category I must have impairments limiting at least four functional capabilities, individuals in Priority Category II must have impairments limiting three functional capabilities, and individuals in Priority Category I must have impairments limiting two functional capabilities.

We request the policy manual be revised to reconcile the definitions of these Priority Categories.

### **Training:**

We appreciate ARS’s commitment to funding training programs to prepare individuals to achieve employment. We are concerned about the requirement that individuals who choose to attend school outside of commuting distance incur additional costs. Some programs may not be located near an individual’s home, particularly specialized programs. We are also unsure why individuals who attend out-of-state institutions as well as students who are seeking masters degrees are required to attend on a full-time basis, while other students are not. In addition, we are unsure why ARS will only fund summer courses for students classified as juniors or higher.

We are also concerned that the policy manual discourages online courses. Online courses provided by accredited institutions can be valuable for many students, including students with disabilities, and we do not understand the rationale that online training can only be used if training cannot be arranged by any other method (p. VI-31). We request that this policy be changed to be more supportive of online training.

Our agency is troubled by the ARS practice of requiring students to pay for a semester of a training program or college prior to receiving ARS financial support. We request that the ARS policy manual include a provision to affirmatively state that this practice is not ARS policy.

### **Maintenance:**

New language in the Maintenance section (pp. VI-35 to VI-38) provides that the counselor must first exhaust the assistance available through the Social Security Administration before funding maintenance support. We are concerned that this language does not clearly state that an individual who is eligible SSI and/or SSDI benefits is exempt from financial participation in vocational rehabilitation services (34 CFR §361.54(b)(3)(ii)). Maintenance is a supportive vocational rehabilitation service provide so that the consumer can derive the full benefit of vocational rehabilitation services. As maintenance is a vocational rehabilitation service, individuals who receive SSI and/or SSDI benefits therefore are exempt from financial participation in maintenance.

We request that the language in the policy 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.

### **Services to Family Members:**

Services to family members of individuals receiving vocational rehabilitation services can be critical in allowing those individuals to successfully achieve an employment outcome. Federal regulations require the state unit to provide vocational rehabilitation services to family members "if necessary to enable the applicant or eligible individual to achieve an employment outcome" (34 CFR § 361.49(g)).

We are concerned that the new 3 month limit placed on services to family members is too restrictive and in violation of federal regulations (pp. VI-49-51). In many circumstances, an individual who is receiving vocational rehabilitation service may need more than 3 months of child care or other services to family members in order to complete the rehabilitation service. We request that the time limit on these services be removed from the policy manual.

### **Small Business Plan Development:**

Operating a small business can be a viable employment option for an individual with a disability. We appreciate the level of detail in the Self-Employment/Small Business Program Appendix A. However, we are concerned by the requirement that a client must complete a small business plan/feasibility statement within 15 business days from RIDAC approval. This short time frame may not be feasible for many individuals, particularly given that some clients may be referred to outside resources for assistance in developing the plan, as well as the detailed analysis required in the plan. We request that ARS provide a more realistic timeframe for individuals to complete their small business plan.

### **Limitations on Use of Subminimum Wage:**

We welcome the inclusion of additional information on supported employment, customized employment, and WIOA Section 511 limitations on the use of subminimum wage, and we appreciate ARS's commitment to moving individuals into competitive, integrated employment.

#### *Required counseling and information and referrals:*

In the description of the limitations on the use of subminimum wage (pp. VI-44-45), and again in Appendix C (pp. C-31-32), we request the policy manual explicitly state who is responsible for providing the required career counseling, including information and referrals to other state and federal entities that provide employment services. On p. VI-44, the policy manual states that individuals with disabilities employed by a 14(c) certificate holder must be provided career counseling and information and referral every six months for the first year of employment and annually thereafter, but does not explicitly state that ARS is responsible for providing this counseling.

Further clarification regarding responsibility for providing counseling and information and referral is necessary in Appendix C, pp. C-31-32. For example, is it the CRP's responsibility to notify ARS of clients needing the 6-month and annual reviews, or does ARS keep track of individuals needing those reviews after providing the initial counseling and information and referral? Does ARS monitor whether CRPs comply with these provisions, or is the compliance left to the U.S. Department of Labor, Wage and Hour Division? We request the policy manual explicitly state who is responsible for ensuring individuals in subminimum wage employment receive the initial and ongoing counseling required by WIOA.

We are also concerned about the process by which individuals currently working for subminimum wage apply for ARS services. No. 4 of the "Procedures—Section 511" on p. C-32 states that "The counselor will determine which services, including external employment services, an individual may need to be successfully employed." We are concerned that this procedure allows the counselor to make unilateral decisions and does not account for the informed choice of the individual, contrary to federal requirements. We request this procedure be changed to reflect that counselors and individuals jointly work to identify needed services.

### **Competitive Integrated Employment Case by Case Determination:**

Included in the section on Job Placement Services in Appendix C (pp. C-24-26) is a provision that an ARS counselor, business engagement representative, or external employment vendor “may seek technical assistance from the ARS Community Program Development Section for an evaluation to determine if a job position meets the Competitive Integrated Employment definition as established in the regulations.”

We are concerned that no standards for making this determination are included within this section, nor is the evaluation process described. We request that the policy manual explicitly describe the process and the standards by which this determination will be made. We request that the actual definition of competitive integrated employment be included here, rather than a reference to the regulations.

### **Pre-Employment Transition Services:**

We appreciate the updated section on Pre-Employment Transition Services, as these services are critically important to preparing students and youth with disabilities to achieve competitive, integrated employment.

#### *Definition of IEP:*

DRA requests that the definition of “Individualized Education Plan (IEP)” on p. 3 of the Pre-ETS section as well as the definition on p. D-7 of Appendix D be changed to reflect the terminology used in the Individuals with Disabilities Education Act (IDEA): “Individualized Education Program” rather than “Plan” (emphasis added). We also request that language be added to this definition to clarify that an IEP is required for students with disabilities who are eligible for special education and related services under the IDEA.

#### *Youth known to be seeking subminimum wage:*

DRA is concerned that the section regarding youth seeking subminimum wage employment who refuse ARS services (pp. 9-10 of Pre-ETS Section) does not comply with Section 511 of the WIOA. If youth complete the process to refuse ARS services, are they then allowed to seek subminimum wage employment? We are concerned this process is a way to bypass Section 511 requirements that must be completed before youth can work in subminimum wage employment. The policy manual does not explain what happens to these youth after they refuse services.

DRA also requests to know when the forms referenced in this Pre-ETS Section will be promulgated.

**Due Process Forms:**

DRA is grateful that the due process forms have been changed to include our agency's current address. We respectfully request the name of our agency on the forms be changed from "Disability Rights Center" to "Disability Rights Arkansas" to reflect our agency's current name.

DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Caroline Boch / of". The signature is written in a cursive, flowing style.

Caroline Boch  
Attorney