

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

PROGRAM ASSISTANCE CIRCULAR
RSA-PAC-88-03
June 7, 1988

TO: STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)
CLIENT ASSISTANCE PROGRAM
RSA REGIONAL COMMISSIONERS (REGIONS I - X)
RSA SENIOR STAFF

SUBJECT: Actions or Issues an Applicant or Client Can Appeal

STATUTORY AND REGULATORY CITATIONS

(1) Section 102(d)(1) of the Rehabilitation Act of 1973, as amended

(2) 34 CFR 361.48

SUPPORTIVE GUIDELINES:

This Program Assistance Circular (PAC) is issued to clarify if a State Vocational Rehabilitation agency can establish limitations on actions or issues an applicant or client can appeal.

Section 102(d)(1) of the Rehabilitation Act of 1973, as amended, states that except for those States which had a fair hearing board established by the State before January 1, 1985, the State unit Director shall establish procedures for the review of determinations made by the rehabilitation counselor or coordinator. Federal Regulations in 34 CFR 361.48(c)(1) state that..." the State plan must assure that procedures are established by the Director of the designated State unit so that any applicant for or client of vocational rehabilitation who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request a timely review of those determinations."

In accordance with the above Law and Regulations, a State vocational rehabilitation agency must assure that appeal procedures are established and applicants and clients are informed of the appeal procedures available, including the

names and addresses of individuals with whom appeals may be filed (34 CFR 361.48).

The Law and Regulations do not define or limit the types of issues or decisions which can be challenged through the appeals process. Therefore, it would be inappropriate for a State agency to establish arbitrary limits on actions, issues, or circumstances which an individual can appeal.

A specific question has been raised about whether a State vocational rehabilitation agency may establish policy which prohibits an applicant or client from seeking a change of counselor or coordinator through the established appeal process as a singular objective. The counselor or coordinator is the medium through which case action occurs. That staff person is vitally involved in decisions regarding the furnishing or denial of vocational rehabilitation services to an applicant or client and, as such, can impact significantly upon the individual's achievement of a vocational goal. An effective counseling relationship is essential; therefore, if other available remedies fail, failure to obtain a change of counselor or coordinator can be appealable through the established appeal process.

This does not mean that a State agency should relinquish its responsibility for essential administrative decisions regarding case loads among its counselors or coordinators. That responsibility must be exercised continually for effective utilization of staff time and the achievement of maximum results among applicants or clients. Nor does it mean that honoring a request for a change in counselor or coordinator may be the best answer to a real or perceived problem. Because of good counseling relationship impacts positively on the outcome of a case, efforts should be made to settle such issues at the earliest time and at the lowest level possible so the reasonable and agreeable rehabilitation goals may be pursued.

Acting Commissioner of
Rehabilitation Services

INQUIRES
To: Regional Commissioners