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TECHNICAL ASSISTANCE CIRCULAR
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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
TECHNICAL ASSISTANCE & CONTINUING EDUCATION CENTERS
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES PROJECTS
CONSUMER ADVOCACY ORGANIZATIONS

SUBJECT: Determining Eligibility for Persons with Borderline Intellectual Functioning under the State Vocational Rehabilitation Services Program

PURPOSE: Through this Technical Assistance Circular, the Rehabilitation Services Administration (RSA) provides guidance to State Vocational Rehabilitation (VR) agencies regarding the process by which eligibility is established for an individual diagnosed with borderline intellectual functioning. Based on inquiries from VR agencies, RSA is aware that there are differing approaches by which VR counselors determine eligibility for persons diagnosed with borderline intellectual functioning.[1] Specifically, some agencies determine eligibility solely on the basis of the individual's diagnosis of borderline intellectual functioning, while other agencies consider the individual's functional limitations in addition to the diagnosis. RSA intends that the information provided below will resolve these differences and bring consistency to the manner in which eligibility for VR services is determined for individuals with Borderline Intellectual Functioning.

TECHNICAL ASSISTANCE: To be eligible for VR services, an individual must: 1) be an individual with a disability; and 2) require VR services to prepare for, obtain, or maintain employment (section 102(a)(1) of the *Rehabilitation Act of 1973*,

[1] According to the *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition* Text Revision (DSM IV TR) (2000), Borderline intellectual functioning is a categorization of intelligence wherein a person has below average cognitive ability (an IQ of 71-85), but the deficit is not as severe as an individual with intellectual and developmental disabilities (an IQ of 70 or below).

as amended (*Rehabilitation Act*)). An "individual with a disability" is one who 1) has a physical or mental impairment (defined at 34 CFR 361.5(b)(41)) that results in a substantial impediment to employment; and 2) can benefit, in terms of an employment outcome, from the provision of VR services (section 7(2)(A) of the *Rehabilitation Act*). An individual is presumed to be able to benefit from VR services unless the VR agency can demonstrate, through clear and convincing evidence, that the individual cannot benefit in terms of achieving an employment outcome due to the severity of his or her disability (section 102(a)(2) of the *Rehabilitation Act* and 34 CFR 361.42(a)(2)). When determining whether an individual is eligible for VR services, qualified personnel must determine whether the individual has a physical or mental impairment, and whether that impairment constitutes a substantial impediment to achieving an employment outcome (34 CFR 361.42(a)(1)(i) and (ii)). Additionally, a qualified VR counselor employed by the VR agency must determine whether the individual with a disability requires VR services to achieve an employment outcome (34 CFR 361.42(a)(1)(iii)). Finally, individuals determined eligible for the receipt of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits are presumed eligible for VR services (section 102(a)(3) of the *Rehabilitation Act* and 34 CFR 361.42(a)(3)).

In applying these legal requirements, a determination of eligibility for those diagnosed with borderline intellectual functioning, or any other disability, must be based solely on the criteria set forth at section 102(a) of the *Rehabilitation Act* and 34 CFR 361.42(a). In particular, qualified personnel must first determine that the individual with a diagnosis of borderline intellectual functioning is an individual with a disability and that the disability constitutes a substantial impediment to the achievement of an employment outcome.

In the assessment, the measured cognitive abilities of an individual diagnosed with borderline intellectual functioning is only one factor to be considered when determining if an impairment exists that results in a substantial impediment to employment as required by section 361.42(a)(1). Therefore, it is critical to assess any other functional limitations the individual may have, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance and work skills. Should the individual with a diagnosis of borderline intellectual functioning be eligible or be receiving SSI or SSDI, then he or she is presumed eligible for VR services without further determination by the VR agency.

Once all determinations have been made, it is the responsibility of a qualified VR counselor employed by the state agency to determine whether that individual requires VR services to achieve an employment

outcome. If the qualified VR counselor makes such a determination of an individual diagnosed with borderline intellectual functioning, then that individual is eligible for services. Through the application of comprehensive assessments, on a case-by-case basis, VR agencies can ensure that individuals with borderline intellectual functioning have an impairment as defined by 34 CFR 361.5(b)(41) and are appropriately determined eligible.

SUMMARY: The eligibility determination for an individual with borderline intellectual functioning is based on a case-by-case assessment. The measured cognitive deficit as derived from an IQ test should not be the sole criteria applied when determining if an impairment results in a substantial impediment to employment. Instead, the VR agency must assess any other functional limitations the individual may have to determine eligibility. This will minimize situations where individuals with borderline intellectual functioning fail to receive the services necessary to attain, regain, or maintain employment.

CITATIONS: Sections 7(2)(A) and 102(a), (a)(1), (a)(2), and (a)(3) of the *Rehabilitation Act*.

34 CFR 361.5(b)(41) and 361.42(a), (a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2), and (a)(3).

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National Council of State Agencies for the Blind
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National Disability Rights Network