



MARIJAYN DUCHENE BFA  
OPUSARTS LLC  
1144 OTTAWA AVENUE  
ST. PAUL, MN 55118-2008

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## Office for Civil Rights Discrimination Complaint Form

### 1. Enter information about yourself.

- \* **First Name:** MariJayn
- \* **Last Name:** Duchene
- \* **Address:** as above
- \* **City:** as above \* **State:** as above
- \* **Zip Code:** as above

**Best Time to Call You:** Contact me by **e-mail only** at above addresses.

- \* **Primary Phone Number:** as above
- Alternative Phone Number: none
- **Your Email Address:** as above

I AM AN MS. MARIJAYN DUCHENE.

### 2. Who else can we call if we cannot reach you?

**Contact's Name:** (1) MariJayn Duchene BFA **E-mail only:**  
[OpusArts@aol.com](mailto:OpusArts@aol.com) or you can review the documentaiton and basic  
**data in this case at:**

<http://www.angelfire.com/mn3/advocate/tablecontentsOPUSARTSCASE.html>

**E-mail only:** [OpusArtsLM@aol.com](mailto:OpusArtsLM@aol.com)

**Relationship to you::** N/A

### 3. Who was discriminated against?

**Yourself?** YES

**Someone else?** YES, my company: **OpusArts LLC**



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<http://www.GlamourPortraitsOnline.com>

<http://www.OpusArtsLLC.com>

Artwork samples OpusArts LLC., site under construction

**If someone other than yourself please include:**

Injured Person's Name: N/A

Daytime Phone Number: 651 457 4376

Evening Phone Number: 651 457 4376

Relationship to You (eg. son or daughter) **N/A**

Injured Person's Address: 1144 Ottawa Avenue

City: Saint Paul

State: Minnesota

Zip Code: 55118-2008

*If the person discriminated against is age 18 or older, we will need that person's signature before we can proceed with this complaint. If the person is a minor, and you do not have legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.*

**4. What institution discriminated?**

(OCR's laws cover educational institutions such as school districts, colleges and universities, public libraries and state vocational rehabilitation agencies)

**1. DAKOTA COUNTY VOCATIONAL  
REHABILITATION SERVICES:**

a) Primary Offender: **CONNIE GILES, SUPERVISOR**  
**(HEREINAFTER TERMED PARTY ONE)**

b) Secondary Offender: **KARL KUESTER, COUNSLOR**  
**(HEREINAFTER TERMED PARTY TWO)**



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and

2. **MINNESOTA DEPARTMENT OF ECONOMIC SECURITY:**

- a) Primary Offender: **ROBERTA PISA, (HEREINAFTER TERMED PARTY THREE)**
- b) Secondary Offender: **ASSISTANT COMMISSIONER HOWARD GLAD, (HEREINAFTER TERMED PARTY FOUR)**

3. **CLIENT ASSISTANCE PROJECT, BONITA KALLESTADT (HEREINAFTER TERMED PARTY FIVE)**

4. **MINNESOTA SCHOOL OF BUSINESS/GLOBE COLLEGE, COLLEGE ADMINISTRATION (HEREINAFTER TERMED PARTY SIX)**

• **Institution Name:**

**(1) DAKOTA COUNTY VOCATIONAL REHABILITATION SERVICES:**

**Address:** 14551 City Road 11, Suite 140

**City:** Burnsville

\* **State:** Minnesota

**Zip Code:** 55337

**School or department involved:** Vocational Rehabilitation Services

**(2) MINNESOTA DEPARTMENT OF ECONOMIC SECURITY:**

**Address:** Minnesota

**City:** Saint Paul

\* **State:** Minnesota

**Zip Code:** Minnesota

**School or department involved:** Vocational Rehabilitation Services



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**(3) CLIENT ASSISTANCE PROJECT, BONITA KALLESTADT**

Address: Minnesota  
City: WILMAR

\* State: Minnesota

Zip Code: Minnesota  
School or department involved: Vocational Rehabilitation Services

**(4) GLOBE COLLEGE, COLLEGE ADMINISTRATION – MSCI Division**

Address: Minnesota  
City: OAKDALE

\* State: Minnesota

Zip Code: Minnesota  
School or department involved: MINNESOTA SVCHOOL OF  
COMPUTER IMAGING

**(5) MINNESOTA SCHOOL OF BUSINESS, COLLEGE  
ADMINISTRATION– MSCI Division**

Address: Minnesota  
City: RICHFIELD

\* State: Minnesota

Zip Code: Minnesota  
School or department involved: MINNESOTA SVCHOOL OF  
COMPUTER IMAGING

**5. Have you tried to resolve the complaint through the institution's grievance process, due process hearing, or with another agency?**

Yes YES No

Agency Name: (1) Mediation and through (2) Administrative  
Law Court, Mpls., MN



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**Date Filed: (mm/dd/yyyy)**

***Appeal filed approximately one year ago. Issues have been ongoing and escalating since Ms. Giles became supervisor in spring of 1999.***

**If yes, what is the current status of the complaint?**

**1) Litigation is ongoing. VR are vexed that they have lost their case and indicate by activity just before and after retaliation the decision in Ms. Duchene's favor, 9/25/01, that they intend to wear Ms. Duchene down and to deliberately cause harm to her mental health and blacklist her and her business. This is authorized from the State Commissioner. There is no known internal grievance policy that will reconcile this blatant behavior. All efforts have been made to resolve the matter, inclusive new appeals, which the state Rehabilitation Services agency has persisted in refusing to set for appeal. A final request was made to the agency, , to Ms. Pisa, demanding that the agency comply with the court orders, and informing the agency that this complaint will be filed absent compliance with the administrative law court order. The state Rehabilitation Services agency has continued to ignore the court order, and it's intent to interfere with prospective business advantage of Ms. Duchene by communicating privileged medical information about Ms. Duchene with her clients in hopes of using these clients as quasi-medical experts.**

**2) A report was been filed with the Ramsey County Attorney regarding the threat of Commissioner Glad, 10/6/01, to contact Mr. Stafford to influence him to change his good opinion of Ms. Duchene. This was contained in his letter, 10/6/01, in response to the decision of 9/25/01, by the ALJ. It is a criminal offense to influence a witness,**



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**in any proceeding, within one year of litigation, and in some circumstances after that when there is persistent retaliation.**

**3) A complaint to the Lawyers Board has been filed by myself about Bonita Kallestadt, CAP, for failing to appoint an attorney that had no conflict of interest, and for threatening and bullying Ms. Duchene.**

**4) A complaint attached regarding grades, based on refusal to accommodate disability, attached is not being addressed by college. The college is ignoring the complaint and does not appear to understand any disability requirements or issues. Continuing efforts to clarify regulations pursuant to 1973 Rehabilitation Act were made by an advocate.**



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## 6. Describe the discrimination

OCR enforces regulations that prohibit discrimination on the basis of race, color, national origin; sex; disability; and/or age.

### On what basis were you discriminated against?

(You may select more than one.)

**race or color** N/A

- **national origin** N/A
- **disability** YES
- **sex** YES
- **age** YES
- **retaliation because you filed a complaint or asserted your rights** YES

**In the space provided below please describe each discriminatory action separately. For each action, you need to provide the following information:**

The incidents below and ongoing modus operandi, involve all of the above types of discrimination, disability, sex, age and retaliation:

- **date(s) the discriminatory action occurred;** 1999-2001 ONGOING AND CONTINUING for over a YEAR, TO DATE
- **name(s) of individual(s) who discriminated;** Mary Jane Duchene BFA, OpusArts LLC. (company owned by client of VRS)
- **what happened;** see immediately below
- **witnesses, (if any);** self, Warren Higgins many others
- **why you believe the discrimination was because of [race, gender, disability, or whatever basis you indicated above] or why you believe the action was retaliatory:**  
NARRATIVE BELOW:

## PART ONE - COMPLAINT VOCATIONAL REHABILITATION SERVICES

### I. ESSENCE OF COMPLAINT

This complaint is that the Rehabilitation Services agency, at a supervisory level, consisting of mainly Ms. Connie Giles (supervisor of Dakota County, from May, 1999), and Ms. Roberta Pisa (supervisor at state level), and after a successful appeal by Ms. Duchene, in 2001, Assistant Commissioner Howard Glad, engaged in **a pattern of civil**



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**rights abuses** toward Ms. Duchene that violated and violates her civil rights and continues as a threaten to destroy Ms. Duchene's business by:

1. intentionally engaged in abusive behavior designed to publicly humiliate and abuse Ms. Duchene personally and professionally, to:
  - a. retaliate against Ms. Duchene out of resentment at past payment of allowable costs for assistive technology needed for Ms. Duchene's Education and Business.
  - b. make Ms. Duchene fearful to ask for services from Vocational Rehabilitation Services that she needs and needed for her studies and business, because Vocational Rehabilitation Services wanted to cut corners and resented the costs involved, notwithstanding these costs were and are allowable under and consistent with costs allowed by the 1973 Rehabilitation Act.
  - c. black list and slander Ms. Duchene and undermine Ms. Duchene's professional relationships, and to use their position as a well funded and powerful government agency to make others frightened to assist Ms. Duchene.
2. intentionally engage in the above behavior, in a persistent and relentless manner, to cause Ms. Duchene to sustain emotional harm, and to cause mental distraction and strain, which foreseeably would exacerbate Ms. Duchene's Post Traumatic Stress Disorder.
3. retaliate against Ms. Duchene because of:
  - a. past political activity regarding Dakota County and City officials in matters that have nothing to do with Ms. Duchene art career and the services she has been receiving from Vocational Rehabilitation Services to start her own business.
  - b. filing appeals against Vocational Rehabilitation Services because of arbitrary denial of assistive technology relevant to her asthma, in 1999 and 2000, because of refusal to approve needed supplies for studies, from 1999 to 2001, and in 2001, over a denial of services.
4. engaged in all of the above behavior because of purported and openly stated personal dislike of Ms. Duchene, that admittedly has no basis in Ms. Duchene's ability to perform her work in her own business.

## **II. COMPLAINT VOCATIONAL REHABILITATION SERVICES - GENERAL BACKGROUND:**





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### **HISTORY - MS. DUCHENE PERSONALLY AND PROFESSIONALLY**

Mary Jane Duchene, BFA, is a well educated and community minded individual. She has a BA from the Minneapolis College of Art and Design, and she studied law, as a member of the Honorable Society of Grays Inn, and typography, in London England, where she lived from 1969 through 1985. She had a successful art career in London, England, and number Revlon International in her client list. She has a BFA from the Minneapolis College of Art and Design, 1969.

As a person and regarding Ms. Duchene's personality, Ms. Duchene has always been very pleasant to me and many other professionals. She is courteous and has no history of any type of violent, use of obscene language, or perverse conduct. She has legal skills, which she developed from studies in London, England, and has successfully defended her self and her rights in legal actions.

### **HISTORY – MS. DUCHENE DISABILITY AND THE CAUSE OF HER PTSD**

For reasons relevant to criminal activity centered in her mother's death, and estate, Ms. Duchene had to return to the USA in 1986. The criminal conduct pertaining to the apparent, intentional, homicide of her mother for profit, remains unprosecuted, and the parties involved continued to be employed in Dakota County by Dakota County (Socials Services and the Office of the County Attorney) and the city she lives in (police). The facts of the crime are that two thirds of her mother's lente insulin was taken away by her mother's doctor, to cause premature death. This evidence was found in nursing home records. The physician who gave these lethal orders passed off as death from cancer. The motive was financial: her mother's brother has obtained a will, a few months before her mother's death, giving him financial claims. These issues are ones, which would create significant embarrassment and possibly result in indictment of several of the officials involved, in the event that prosecution of the homicide occurs. This is always a possibility as there is no statute of limitations for murder cases in Minnesota.

Because Ms. Duchene knows about this and obviously has made efforts to ensure the homicide prosecution occurred, Ms. Duchene has in the past been politically active to put pressure on authorities to prosecute the homicide. Her personal experience has made her sensitive to and assisted with other disability related issues involving official abuses, in the larger community. The agencies involved were mainly Dakota County Social Services, the County Coroner who embalmed the body of her mother before autopsy, city police in one Dakota County City, and the County Attorney's Office. The Office of the Attorney General, under HH Humphrey, was unhelpful and unresponsive to professional reports. Medical reports and legal opinion have urged



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report of this matter to higher authorities when a better political climate occurs. Ms. Duchene has been subjected to extensive harassment, and attempts to ostracize her, over a period of about fifteen years from Dakota County officials because she had the misfortune of being the victim of criminal activity regarding her mother and their estate, and because of her political activity.

Anyone in Ms. Duchene's position would be traumatized including Ms. Duchene, and Ms. Duchene has been clinically diagnosed with Post Traumatic Stress Disorder, with Depressive features.

There is minimal evidence available that the county officials involved with the death of Ms. Duchene mother, which resulted in a federal suit against the County Coroner and County attorney in 1994 and 1995, are involved in these current issues with her business. Social Services was the agency initiating the snow removal conflict, when it as discovered Ms. Duchene was developing her business. Ms. Giles included a public service sign about the death of Ms. Duchene's mother that names county officials, as one of the reasons for her termination of Ms. Duchene's services, in an eight-page list of complaints, in a eight page, single spaced, list of complaints, which she provided. These county officials have strong motivation for taking actions to discredit and harm Ms. Duchene, so that any complaints against them Ms. Duchene might make, are disregarded,

#### **HISTORY – KNOWLEDGE OF MS. DUCHENE'S MEDICAL HISTORY BY REHABILITATION SERVICES PRIOR TO APPROVING SERVICES**

Ms. Duchene became disabled from Post Traumatic Stress Disorder in about 1989 from legal and official abuse by Dakota County officials, with extensive ongoing harassment, as per the diagnosis of psychiatrists Dr. B William Murphy, Dr Sharon Satterfield, and psychologist, Dr. Bruce Thordal PhD. She was approved for SSI in 1995. She receives regular psychological therapy. She also has severe childhood asthma, which redeveloped in 1994 and 1995.

In summer, 1998, Ms. Duchene, after years of involvement with such extremely negative circumstances, endeavored to move on with her own personal and professional life by applying for Vocational Rehabilitation Services.

#### **HISTORY – WORK PLAN**

She had been self-employed in the past and an agreement and plan, to assist her with computer graphics/animation courses, and technical support to start her own business, was developed with Dakota County Vocational Rehabilitation Services.



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At the time of initial approval of her work plan in 1998, the agency received medical records that informed them of details regarding Ms. Duchene's PTSD and asthma, with sensitivity to cold and exercise, from the mental health providers listed above and her pulmonary medical doctors. The agency was fully informed before agreeing to Ms. Duchene's employment plan. The specific work plan was and is:

- 1) to start a home based business, and to make a business plan and PASS plan to be evaluated by the Department of Social Security, not the Minnesota Department of Economic Security.
- 2) to do courses to learn new computer technology to be evaluated by teacher at the college and requiring the maintenance of a "C" average.
- 3) to continue in regular therapy to mental health standards.

In the fall of 1998, early October, Ms. Duchene started the computer animation/graphics courses. She was delighted to move on from past distresses relevant to the criminal matters surrounding her mother's death that had become political issues for local county and city officials; and for the potential of positive life change by starting courses she needed to redevelop her professional life. She hoped to improve her health and self esteem through these endeavors. Ms. Duchene was doing the best she could with a difficult social circumstance in which unresolved criminal acts against her and her mother were unresolved. She attempted to move on with her life.

The school, MSCI, was chosen because it is one of three or four schools, all private, in the state, that offer a computer animation course. It cost less than the Minneapolis College of Art and Design, from which Ms. Duchene had graduated in 1969, with a BFA in painting.

#### **HISTORY – LIMITATIONS ON COMMUNICATIONS WITH THIRD PARTIES**

Because of past harassment and possible continuing vendettas against her from powerful Dakota County officials, Ms. Duchene did make it a requirement that all third party communication had to be in writing, with a copy to her, to ensure that harassment and mistreatment because of issues regarding the past misconduct of public officials toward her in respect to her mother's death, did not spill over into her professional endeavors, as retaliation and destructiveness, into her professional and personal life. Similar limitations have been placed regarding communications by Dakota County Social Services with third parties, as this agency was directly involved with her mother's death, and were either negligent regarding or facilitated the homicide, according to



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official records Ms. Duchene has. Undocumented, spoken communication easily enables covert manipulation and slander that can readily destroy any citizen, particularly when there are strong motivators for such misconduct.

#### **HISTORY – OTHER FEDERAL AND STATE SERVICES RECEIVED BY MS. DUCHENE**

Ms. Duchene received SSI in about 1995. She receives Food Stamps, and State Minnesota Supplemental Assistance, inclusive a special diet.

#### **HISTORY – PREVIOUS COMPLAINTS TO YOUR AGENCY**

The one services she receives that directly related to her Vocational Rehabilitation Services, was social services help with snow removal, which she needed because her asthma and inability to do heavy exercise in cold weather. There were complications with her Vocational Rehabilitation Services, from early 1999 through the summer of 2001, because of actions by Dakota County Social Services in conjunction with Dakota County Vocational Rehabilitation Services, regarding these snow removal services. These lead to a previous complaint to your agency, against both Dakota County Social Services in conjunction with Dakota County Vocational Rehabilitation Services which will be detailed later herein. The outcome was that your agency recommended that Ms. Duchene obtain a private attorney to handle the matter, and that your agency intended to take no action at that time.

#### **HISTORY – MS. DUCHENE’S PROGRESS IN HER EMPLOYMENT PLAN**

Ms. Duchene has done well in the courses she has taken, despite extensive lack of co-operation as will be detailed later. She has, to date, registered her LLC., completed a business plan, and found loan funding (from sources other than the Minnesota Department of Economic Security) for her business. She has about seven more classes, in the animation course, to complete overall.

#### **II. COMPLAINT VOCATIONAL REHABILITATION SERVICES – HISTORY PREVIOUS APPEALS, COMPLAINT REGARDING SNOW REMOVAL AND, ALTERNATELY, PROVISION OF A SNOW BLOWER, ASSISTIVE TECHNOLOGY :**

In January, 1999. Dakota County Social Services (herein after termed SS) terminated Ms. Duchene’s snow removal services, which made transportation in winter months difficult if not impossible in many instances, for Ms. Duchene. This was relevant, particularly, to Ms. Duchene, classes for her work plan which require regular access on a daily basis. They also communicated with Dakota County Vocational Rehabilitation Services (herein after termed VR), by telephone, which was a violation of



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the Minnesota Data Practices Act. The VR counselor who made the calls was replaced. Ms. Duchene asked for other assistance and VR agreed to provision of taxis, at over \$300.00.

Ms. Duchene drove over the snow and there were extensive vehicle repair costs from damage to the vehicle from driving over the snow, paid for by VR. Ms. Duchene also fractured her ankle walking over the accumulated ice and snow, on the way to the vehicle from her front door. Ms. Duchene wrote to VR and threatened legal action.

The client assistance Project (CAP) advocated for and represented Ms. Duchene.

Ms. Duchene went through the formality of appealing the decisions of the SS agency through state DHS appeals, upon the advice of CAP.

The matter came up again in late 1999, and early 2000, and VR, and Ms. Duchene, with medical verification that a snow blower would be a viable solution to Ms. Duchene's inability to shovel snow because of her asthma, suggested the alternative of a snow blower to assist with the problem of snow removal, to accommodate her disability, asthma. This time her VR counselor, Karl Kuester, refused and stated that the college was violating Ms. Duchene's civil rights by failing to teach Ms. Duchene via

Distance Learning. Ms. Duchene only has a dial up Internet service, which is not large or fast enough, to transmit large graphic files sufficiently quickly to do the courses by Distance Learning. Mr. Kuester refused to provide tai assistance this time. Ms. Giles was by this time Supervisor to Mr. Kuester. Ms Duchene threatened legal action and filed an appeal.

Ms. Duchene appealed the refusal of Dakota County Vocational Rehabilitation Services, to provide the snow blower and the case was settled on Ms. Duchene's favor in the summer of 2000. CAP negotiated this settlement and Ms. Duchene agreed to extend the limits on 3<sup>rd</sup> party communication to meetings at which she was present, with 3<sup>rd</sup> parties, as consideration for this settlement and agreement.

Ms. Duchene felt that her disabilities were not being accommodated by the VR agency's actions.

VR counselor, Kuester and Giles, appeared angry that they "had to" settle and continued to ruminate that they disapproved of the settlement. The CAP contacted Karl Kuester and requested that he drop the issue.



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**III. COMPLAINT VOCATIONAL REHABILITATION SERVICES – HISTORY  
REGARDING OTHER DAKOTA COUNTY VOCTATIONAL REHABILITATION  
SERVICES MATTER IMPACTING ON CIVIL RIGHTS VIOLATIONS, INCLUDING  
PAST APPEALS:**

A) Fall, 1998 - Ms. Duchene had an old computer at home, which she thought she could use a in her course work, when she applied for services. Ms. Duchene did not know enough about computers to have any real ability to judge this prior to doing classes. She became aware that the computer was too old to accommodate any of the contemporary computer programs that she needed to learn in her classes, when she took a Photoshop Class. Her counselor, Sue Young, told her she needed to apply for scholarships to get a computer before RS would consider getting one for her. Ms. Young sent research that did not include any fruitful leads on getting such a scholarship. The class was over and Ms. Duchene still had no computer to practice on at home. Ms. Duchene received a “D” in the classes because she did not have the equipment she needed to do the course.

B) Spring 1999 - Ms. Duchene needed to have a computer at home, so she could work at times the college is closed, because of her disability, PTSD. She became aware that she was entitled to this according to state VR policy, which she received from the CAP. Dr. Thordal verified this was medically, in about March, 2001. Mr. Kuester became agitated at this expense and threatened to subject Ms. Duchene to public humiliation, by taking her by the hand to the college to show her where the computers were. Ms. Duchene retains this tape of the answering machine message left by Mr. Kuester. Dakota County Vocational Rehabilitation Services purchased a computer under the following state policy:





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## VR POLICY AND PROCEDURE MANUAL

Chapter 4: PRIMARY SERVICES  
4E: COMPUTERS

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### E. COMPUTERS

#### POLICY

VR must purchase computer hardware, software, modems, printers, and other peripherals only for disability-related reasons or when necessary for a consumer to achieve an employment goal through self-employment or small business enterprise.

VR must not purchase any computer-related equipment if a consumer's needs can be met through alternative means, such as the use of computer laboratories at postsecondary institutions.

An assessment of the consumer's needs for computer-related equipment must be conducted before a purchase if the consumer or the counselor are unsure of the consumer's needs. The assessment must be conducted by a person knowledgeable about computers who is not a vendor of computer equipment.

Consumer financial participation (CFP) applies. A search for comparable benefits is required unless such a search would cause the loss of an immediate job placement.

VR expenditures for the purchase of computer hardware, including modems, printers, and other peripherals must not exceed \$3,000, excluding costs for an assessment of the consumer's need. Exceptions will be made for adaptations required because of the consumer's disability. Other exceptions will be considered by the VR Director if a designated VR EDP staff expert agrees that a computer and related equipment required to meet the goals of the IWRP cannot be purchased within the fee schedule.



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## VR POLICY AND PROCEDURE MANUAL

Chapter 4: PRIMARY SERVICES  
4E: COMPUTERS

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### AVAILABILITY OF ALTERNATIVES

VR does not routinely purchase computers for students attending postsecondary institutions. The need for VR to purchase a computer is based on disability-related reasons, not on the course of study being pursued by the consumer. It is expected that VR consumers will use the computer labs provided by the school for all students and that the school will make such labs accessible to students with disabilities. However, in some individual situations, a consumer may not be able to access a lab for disability-related reasons not associated with the lab itself. For instance, a student with fatigue issues or a student whose disability precludes being able to travel to the school during times the lab is open may have a disability-related reason for VR to assist in the purchase of a computer.

For placement purposes, a computer and adaptations may often be a reasonable accommodation that would be provided by an employer. It would be appropriate for VR to evaluate what the consumer will need to use a computer on the job so that a valid request for reasonable accommodation can be made. When VR is involved in the purchase of a computer for employment purposes, it is generally better to delay purchase of a computer until after a specific placement is made to assure that equipment provided by VR is compatible with the system operated by the employer.

### FEE SCHEDULE

It is generally possible to purchase a computer system that will meet the consumer's needs for under \$3000. Exceptions to the fee schedule can be made for rehabilitation technology needs beyond the basic computer. Other exceptions can be granted by the VR Director if a designated VR EDP staff expert agrees that a computer and related equipment required to meet the goals of the IWRP cannot be purchased within the fee schedule. Evaluation and/or consultation necessary to identify the consumer's needs and training necessary to teach the consumer how to use the computer is not subject to the fee schedule. Software necessary for the IWRP can be purchased at cost.

### SINGLE TIME PURCHASE

Generally VR will purchase a single computer for a consumer. If changes or upgrades are needed for disability-related reasons or because of agreed-upon changes to the vocational plan, a new computer can be purchased. Efforts should be made to trade in the original computer or to have it returned to the agency for reassignment to another consumer.





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Although Mr. Kuester did ultimately authorize the computer and some basic programs, by April, 2001, Ms. Duchene had to receive an incomplete in the classes that required computer use, in the winter term of 1999, but did complete the work as soon as the computer arrived, and passed the classes with high grades.

C) When Ms. Giles became supervisor in May, 1999; a contentious and combative approach toward Ms. Duchene was encouraged by Ms. Giles, notwithstanding the agency was aware that Ms. Duchene had PTSD.:

- a. in mid-August, of 1999, Ms. Giles refused to supply Ms. Duchene with computer programs need to do course work for a web design class. Ms. Giles had Mr. Kuester write to the teacher who provided the letter verifying the need for the programs, criticizing the teacher for the format of the letter and giving misinformation designed to be confusing, that the sole criteria for supplies, was whether all students had these or not. This suggested that unless all students had the same assistive technology, that Ms. Duchene had, that the supplies were not allowed or payable by VR. The letter specifically and deliberately avoided clarification contained in:

Rehabilitation Act 1973 regulations on supplies:

§361.50 Written policies governing the provision of services for individuals with disabilities. The State plan must assure that the State unit develops and maintains written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IWRP and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(a) Out-of-State services.

(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(b) Payment for services.

(1) The State unit shall establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, provided that the schedule is—



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- (i) Not so low as to effectively deny an individual a necessary service; and
- (ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(c) Duration of services.

(1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

- (i) Not so short as to effectively deny an individual a necessary service; and
- (ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IWRP.

(d) Authorization of services. The State unit shall establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given. (Approved by the Office of Management and Budget under control number 1820-0500.) (Authority: Secs. 12(c), 12(e)(2)(A), and 101(a)(6) of the Act and 29 U.S.C. 711(c),

The letter was designed to confuse and to intimidate the teacher so that such letters would not be provided, to the result that VR would not have to pay for such supplies. Ms. Giles made accusations against Ms. Duchene, based on erroneous research Ms. Giles did, that these programs are free, e.g. Shockwave Player is free, and Macromedia Director is not. By late September of 1989, Ms. Duchene filed an appeal and the VR agency agreed to supply the programs. Ms. Duchene was late in getting her work done in this summer term and had to accept an incomplete grade. She turned the work in at the beginning of the following term and passed the class with a grade of B. Ms. Giles and Mr. Kuester later stated they were aware that college did not have a disability advocate or advisor and was vulnerable to confusion about VR regulations, therefore.

- b. Ms. Giles supported the refusal to resolve the snow removal problem, 1999/2000.
- c. in the fall of 2000, Ms. Giles took over as counselor for Ms. Duchene when Mr. Kuester took medical leave, and used that opportunity to terminate Ms. Duchene services on the grounds that Ms. Giles did not like Ms. Duchene personally and she speculated others would hold the same view, therefore, Ms. Duchene did not have good enough people skills to run her business. The termination was within three months of Karl Kuester writing a



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recommendation praising Ms. Duchene as a good student, with business experience, who was supported by VR. The termination occurred in these circumstances:

- i. Ms. Duchene needed CD covers, and labels to store CD copies of her files, and Ms. Giles maintained that she needed a letter from the college to verify that CD's needed to be kept in storage cases and labeled to make them a viable storage option. Ms. Giles accused Ms. Duchene of being "overly neat" and of being abusive towards her because Ms. Duchene contended that this was a simple office supplies
- ii. requisition and she believed Ms. knew that CD covers were a standard a not an extraordinary requirement, that needed extensive proof.
- iii. Ms. Giles refused to accept a written class assignment requiring 3 ring binders for presentation, and demanded extensive and elaborate additional verification, which the teacher refused to provide, because he believed he was not required to, or supposed to do that, by the college. This was apparently relevant to the lack of a disability professional being employed by the college to advise teachers on this subject.
- iv. Ms. Giles made an issue over Ms. Duchene's request that instead of towing costs, a battery charger be purchased, when Ms. Duchene's vehicle would not start, and tried to make Ms. Duchene look foolish by encouraging the garage not to investigate a suspected electrical fault, indicted by the failure of the rear windscreen washer to turn off.
- v. Ms. Duchene filed a complaint with M. Giles's superior, Roberta Pisa, that Ms. Giles was exhibiting contentious and combative, and abusing her power.
- vi. Immediately after this was filed, Ms. Giles terminated Ms. Duchene services and Ms. Pisa supported that. Ms. Giles also accused Ms. Duchene of abusing her because she claimed she had subjective feelings of being humiliated, by Ms Duchene's statements about CD covers as per "i" above in this section..
- vii. Ms. Duchene appealed this termination of services.



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**IV. COMPLAINT VOCATIONAL REHABILITATION SERVICES – HISTORY REGARDING RECENT, CURRENT APPEAL, OF TERMINATION OF SERVICES:**

A) That, in my presence and the presence of advocate Warren Higgins, a review in January, 2001, to review the termination of services, was visibly an attempt by Ms. Giles to cause Ms. Duchene to become re-traumatized and to abuse her to the point of bringing her to tears. Ms. Giles was clearly angry that Ms. Duchene had stood up to her in the past and asserted her rights legally. Her behavior was a clear indicator that Ms. Giles took Ms. Duchene's standing up for her rights, as a personal affront to her ego and was clearly determined to belittle Ms. Duchene, and attack her in every way, for Ms. Giles's self aggrandizement. Ms. Giles clearly also did not want to put out funding for Ms. Duchene and resented the funding that had been given. Ms. Duchene presented Ms. Giles with a standardized form that she had designed, that the college could use, in hopes of facilitating the process of supplies list for the college and VR.

B) That I was present in the consequent attempt at mediation, which Ms. Duchene instigated and Ms. Giles and Ms. Pisa were openly hostile, and at some points was overtly aggressive. They clearly sought to use their power to put Ms. Duchene in her place and make she did not challenge their decisions again. VR made no real attempt to mediate and took pleasure in causing the event to consume over five hours of time. The behavior demonstrated by Ms. Pisa and Ms. Giles was both childish and alarming. Ms. Kallestadt, from branch of CAP, represented Ms. Duchene at the mediation. It became clear during the mediation that the agency sought to relit gate issues and evidence relevant to the snow blower case, and that the attorney from CAP, who handled the snow blower case, Anne Robertson, would have to be called as a witness, as all of that was barred from re-hearing by Res Judicata and Collateral Estoppel.

C) That Ms. Kallestadt attempted to threaten and bully Ms. Duchene into agreeing to termination of her services, and demanded that Ms. Duchene agree to call the business plan expert, a Mr. Stafford, who had become M. Duchene's client, into court; notwithstanding this would likely terminate the good relationship she had with him. Ms. Kallestadt, apparently did this knowing the probable effects and that there was no need to call him into court as he had done a formal Testimonial for Ms. Duchene to attach to her business plan.

D) Ms. Duchene handled the case herself, and prevailed, in a decision dated September 09, 2001. While doing over 300 hours in legal work, Ms. Duchene also did four classes each term. The case took about seven days and represented a



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expenditure by VR of more than \$60,000.00, for their own costs alone, excluding costs sustained by Ms. Duchene. Ms. Pisa, Ms. Giles, and Mr. Kuester spent all of this time in court. They acted out and glared at witnesses Ms. Duchene called and she could not have called any business people into these proceedings without alienating them because of that behavior. Generally the findings, Minnesota, OAH Docket no. 15-1200-14106-2, were:

- a) that VR did not accommodate Ms. Duchene's PTSD or take steps available to them to accommodate that disability, and disregarded the medical evidence they had with respect to that disability. VR did not present any medical evidence that supported their position, and made threatening and hostile statements about and directed at medical providers because their personal opinions and inclinations disagreed with and were in conflict with those medical providers.
- b) that VR failed to provide Ms. Duchene with many services including: technical assistance to start her business such as marketing assistance, sales, accounting, and other skills such as and "people skills" classes.
- c) that the criteria for provision of supplies is that cited in Rehabilitation Act 1973 regulations on supplies: §361.50..., as above herein; not a state policy, presented out of context, to the effect that can be interpreted to conflict with that federal regulation, to the effect that the supplies must be those required for "all students".
- d) that the ugliness of the litigation made it clear that the particular counselors and Ms. Giles should not continue to work with Ms. Duchene.
- e) that Ms. Duchene's current work plan for employment by creation of her own business not be terminated.
- f) there was a finding of fact only that the threats to litigate in 1999 were "abusive" in some context, but that the VR agency did nothing about this, which is not consistent with the commonly understood definition of abuse for the purpose of VR policy, as per the "Unger" case enclosed below. This finding suggests that VR clients are cannot used civilized methods such as threats to pursue and pursuit of legal recourse to protect their rights. There was also the finding of fact that Ms. Duchene misunderstood Ms. Giles's claim about her feeling abused, to Ms. Duchene, when she assumed Ms. Giles had been subjected to some real abuse, such as sexual abuse, at some time in her life





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and was projecting blame for this onto Ms. Duchene. There is no finding that Ms. Duchene is incapable of understanding written communication.

g) that Ms. Duchene is disabled and eligible for, and entitled to continued VR services.

E) That it was notable the Ms. Giles, who was clearly the ring leader in this matter and who clearly had an agenda regarding Ms. Duchene, and held great personal animosity toward Ms. Duchene, made it clear in her testimony that the cost of services was the real consideration involved in termination of services, notwithstanding that an affidavit from another VR client, clarifies that the supplies and services Ms. Duchene received are not unusual in cost or type. Ms. Giles submitted an eight paged, single spaced, gripe list about M. Duchene, that indicated she had started her activities against Ms. Duchene, from the time she started employment, in May, 1999.. Mr., Kuester stated at mediation that Ms. Giles immediately presented a negative focus on Ms. Duchene when she started in 199, whereas the previous supervisor had not done that.

F) That the testimony revealed that Ms. Giles's background in rehabilitation, was one exclusively connected to St. Peter's Mental Facility for the criminally insane, which is the main holding facility for violent criminals and psychotic persons deemed to be incompetent to stand trial under Rule 20, of the Minnesota Rules of Criminal Procedure; and this explains Ms. Giles's admitted lack of experience with any clients who pursued commercial art, and likely many other serious careers, and her focus on attempting to criminalize or attack her clients and their mental health status. Ms. Giles presented employees she had hired who were former prison guards, who she presumably had known at St. Peters. Ms. Giles admitted, with pride, in her testimony, to sadistic behavior, directed against Ms. Duchene, epitomized by her laughing at the possibility of "people skills classes" for Ms.. Duchene, to compensate for the alleged lack of people skills, which Ms. Giles purported she believed Ms. Duchene lacked, and which was the basis for termination of Ms. Duchene's services.

G) That Ms. Giles testified that her educational qualifications are college level accounting, and further went on to indicate that she believed she should act as the accounting professional for OpusArts LLC, and that her opinions must be pursued by OpusArts LLC. There is obviously a conflict in Ms. Giles working for VRS and as the accountant for OpusArts LLC. OpusArts LLC. should have its own accountant that is independent from VRS and it must be this independent accountant that creates the accounting aspects of the OpusArts LLC. business plan and business policy as the company develops. This violates the rights of Ms. Duchene as a disabled business



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owner and subjects her to over-regulation, discriminatory practices, that a non-disabled business would not have to endure. It also infringes on the company itself.

**V. COMPLAINT VOCATIONAL REHABILITATION SERVICES – DIRECT RETALIATION BY REHABILITATION SERVICES AGAINST MS. DUCHENE FOR PURSUING THE APPEAL, RESULTING IN THE DECISION OF 9/25/01; DURING THE APPEAL:**

A) In August, 2001, in the interim in which the decision by the ALJ was pending, and during which the Rehabilitation Act prohibits withholding of services, VR denied essential services for a print portfolio; that is the actual and suitable portfolios, needed for Ms. Duchene's business. Services were withheld in a manner inconsistent with: § 361.57 Review of determinations made by designated State unit personnel. (4) Impact on provision of services. The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section ... Services were effectively denied on the ground that Connie Giles and Karl Kuester did not approve of her work plan and business plan, notwithstanding that this was under appeal. Ms. Duchene filed a separate appeal at this time and there has been no hearing date set. Ms. Duchene was unable to complete portfolios that were suitable for her business, for her class, therefore. This was direct retaliation and destructive activity, in retaliation because Ms. Duchene had filed appeals in the past.

B) That in August, 2001, VR counselor, Karl Kuester, wrote to Michelle Austin, a teacher who had provided a testimonial regarding the standard of Ms. Duchene's work, for attachment to her business plan, for the proceedings, with the same state policy argument, presented in a manner that was designed to obfuscate, mislead and misrepresent, the criteria in Rehabilitation Act 1973 §361.50 regulations on supplies, Sect. II, C (a) above, alleging the sole standard for provision of supplies was the criteria that all students must have the supplies. The letter was nearly identical to the one written in August of 1999, and was written after Karl Kuester, Roberta Pisa, and Connie Giles, had sat in the hearing room and heard Ms. Duchene's testimony that the said letter in 1999, was taken to be an aggressive, threatening, and confusing communication by another teacher, in 1999. Ms. Austin was entirely confused by Mr. Kuester's letter, understandably, as she has absolutely no knowledge or training in the Rehabilitation Act of 1973. Ms. Duchene has from Ms. Austin several e-mails that verify this. Mr. Kuester engaged in verbal communications with Ms. Austin, outside of those permitted and agreed to by Ms. Duchene, in the written settlement of July 2000, when



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Ms. Austin called him. Ms. Austin teaches computer design programs and has no legal training or background.

C) That the said letter so terrified Ms. Austin that it impacted, adversely, on the teacher student relationship Ms. Austin had with Ms. Duchene and affected the grades of the undersigned, in this class. Ms. Austin appeared to have discussed this with several other teachers, who were also grading Ms. Duchene. There was a refusal to accommodate Ms. Duchene's disabilities and special circumstances, which will be addressed later herein.

D) The circumstances had escalated, at this time, to one in which the VR were acting out in blind rage, destructively, in other words exhibiting intentional conduct, in which agency employees were doing everything possible to be destructive of Ms. Duchene and her business, registered as OpusArts LLC., June 15, 2001. Ms. Pisa and M Giles acted out and behaved in a manner that caused the witnesses presented to be frightened of them. It was and is clear that these parties had no self-control over their emotions, and behavior acting those out, and that there is no supervisory control in place to rectify this. Ms. Duchene had several technical problems and needed a lot of help in this graduation term, and she was frightened because of the rage exhibited by the VRS workers t supervisory level to ask for help with transport and electronic computer problems, and need coaching and support from advocates and associates to do this. The agency, Ms. Giles, Ms. Pisa and Mr. Kuester, were combative all through the period up to, and after, the decision of the ALJ, September 6, 2001. After the decision, Ms. Pisa, under the supervision of Mr. Glad: actively instituted the intended and announced pattern of conduct of violating privacy and data practices laws by covert communications intended to cause clients and associates to be alienated from Ms. Duchene.

See website for evidence and details:

<http://www.angelfire.com/mn3/advocate/tablecontentsOPUSARTSCASE.html>

**VI. COMPLAINT VOCATIONAL REHABILITATION SERVICES – DIRECT  
RETALIATION BY REHABILITATION SERVICES AGAINST MS. DUCHENE FOR  
PURSUING THE APPEAL RESULTING IN THE DECISION OF 9/25/01;  
IMMEDIATELY AFTER THE APPEAL:**

The state Rehabilitation Services agency has continued to retaliate against Ms. Duchene for filing various appeals and prevailing by refusing to ignoring the





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court order and threatening to contact clients and those who supply Ms. Duchene/OpusArts LLC with testimonials and good references.

### **PART TWO - COMPLAINT CLIENT ASSISTANCE PROJECT:**

The Client Assistance Project gave MS. Duchene poor legal advice, that she should call clients into court notwithstanding written testimonials were available, and embarrassing clients was not necessary, and refused to handle the 2000/2001 appeal, unless she followed their bad advice. Ms. Duchene handled the appeal herself and prevailed.

### **PART THREE - COMPLAINT GLOBE COLLEGE/MSB, MSC DIVISION**

#### **COMPLAINT GLOBE COLLEGE/MSB, MSC DIVISION:**

The College has no disability advocate or knowledge about the state Rehabilitation Services program for the disabled. The college leaves implementation of the requirements for compliance with the state Rehabilitation Services programs up to individual teachers who have no training in the policies of the state Rehabilitation Services programs.

The college also does not give out a list of supplies for each class, so that a special list can be drawn up for students under the state Rehabilitation Services program that makes lesser and inferior quantity supplies for disabled students, than other students who can afford to pay themselves for private education. This availability of books and supplies impacts on student grades as the course (Mutil Media) is designed to encourage different levels of achievement, with those students who but more books and seek out extra studies achieving higher grades.



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**COMPLAINT - STATE CASES used, unsuccessfully, by State Rehabilitation Services agency to support their case:**

**1. Unger Case**

OAH DOCKET NO. 73-1200-11315-2

STATE OF MINNESOTA  
DEPARTMENT OF ECONOMIC SECURITY  
REHABILITATION SERVICES BRANCH

In the Matter of the Appeal of  
Andrew Unger pertaining to  
the provision of Vocational  
Rehabilitation Services

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION

The above entitled matter came on for hearing before the undersigned administrative law judge on October 1, 1997 at the Office of Administrative Hearings, 100 Washington Square, 100 Washington Ave., Minneapolis, MN 55401. The record closed on October 1, 1997.

The Appellant, Andrew Unger, 1070 - 14th Ave. SE, Minneapolis, MN 55414, was not present and was not represented by counsel. The Rehabilitation Services Branch was represented by Donald Notvick, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN, 55103-2106. Also present were: Kim Hoffer, Career Counselor, Division of Rehabilitation Services; John Nash, Career Counselor, Division of Rehabilitation Services; and Roberta Pisa, Program Manager, Division of Rehabilitation Services.

Please take notice that the decision of the impartial Hearing Officer may be reviewed by the Assistant Commissioner in charge of rehabilitation services, provided that the Assistant

Commissioner notifies the Appellant of that intent within twenty days of mailing of this decision. If this notice is not provided, then the decision herein becomes a final decision.

If there is a review by the Assistant Commissioner, the Appellant will be provided an opportunity for the submission of additional evidence and information relevant to the final decision. Within thirty days of providing notice of intent to review this decision, the Assistant Commissioner shall make a final decision and provide a full report in writing to the Appellant. The report shall also inform the Appellant of the right to judicial review of the Assistant Commissioner's decision. Questions concerning the Assistant Commissioner's review should be directed to Michael T. Coleman, Acting Assistant Commissioner, Department of Economic Security, Rehabilitation Services Branch, Fifth Floor, 390 North Robert Street, St. Paul, MN 55101.



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## STATEMENT OF THE ISSUE

The issue in this matter is whether the Rehabilitation Services Branch acted properly in ending vocational rehabilitation services to Mr. Unger, the Appellant, because he refused to undergo a psychological evaluation.

Based upon the file, records and proceedings herein, and upon the testimony of witnesses, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Andrew Unger is an adult man with a disability. He has received long-term medical treatment for epilepsy. Exhibits 3 and 4.
2. In an assessment by the Minnesota Department of Jobs and Training dated May 1, 1995, Mr. Unger was found to have a "severe disability that results in a serious functional limitation in terms of employment...." His assessment noted that his "work history includes recent negative references, firings or multiple short term jobs or other evidence of work adjustment problems," and that he "requires modification, adaptive technology and/or accommodations not typically made for others in terms of capacity, endurance or stamina...." Exhibit 2. Mr. Unger was accepted for rehabilitation services.
3. Mr. Unger and his career counselor, Kim Hoffer completed an Individualized Written Rehabilitation Program ("IWRP") on July 14, 1995, for the purpose of obtaining employment in packaging/assembly. DRS agreed to fund placement and job coaching services through AccessAbility, Inc. Exhibit 5.
4. In June, 1995, Mr. Unger received a two week evaluation at AccessAbility, Inc. He completed the evaluation. He was also scheduled for a keyboard training program through Sister Kenny Institute. After one week, Mr. Unger terminated the training. Exhibit 7. Mr. Unger continued to receive job placement services through AccessAbility, Inc.
5. On August 24, 1995, Mr. Unger attended a meeting at AccessAbility, Inc. During the meeting, there was a fire drill in the building. Mr. Unger refused to cooperate with the fire drill and became increasingly agitated. His agitation resulted in verbal and physical assaults on staff members.
6. On August 25, 1995, Ms. Hoffer spoke with a representative of AccessAbility who stated that services would be ended because of Mr. Unger's aggressive behavior.
7. On August 30, 1995, AccessAbility, Inc. notified DRS by mail that it was discontinuing services to Mr. Unger as a result of "hostile and violent behavior toward at least four staff." Exhibit 6.
8. During September and October, 1995, Ms. Hoffer worked with Mr. Unger and his legal representative regarding the issues raised by his aggressive behavior. She requested that he agree to a psychological evaluation before DRS continued services. Mr. Unger did not agree to a psychological assessment but did agree that Ms. Hoffer could contact his treating physician. Mr. Unger provided a written release of information.



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9. In November, 1995, Ms. Hoffer contacted by letter Dr. David Knopman, one of Mr. Unger's treating physicians, asking for information and advice regarding Mr. Unger's evident change in behavior, including verbal abuse, profanity and name-calling. Exhibit 8.
10. Dr. Knopman responded by letter dated November 27, 1995, in which he stated that Mr. Unger "might benefit from some psychiatric assessments." He also stated, however, that his assessment was that Mr. Unger "has a problem with adjustment and with personality, and I am not sure how much formal psychiatric input will change those." Exhibit 10.
  
11. From November, 1995 through May, 1996, Mr. Unger and Ms. Hoffer continued to remain in contact. Some of the telephone calls between them were regarding Mr. Unger's request for a letter of recommendation from Ms. Hoffer. Ms. Hoffer refused to provide a letter of recommendation because of Mr. Unger's prior aggressive behavior, and Mr. Unger repeatedly telephoned, sometimes daily, requesting the recommendation.
  
12. In May, 1996, Mr. Unger requested that he be assigned a different DRS career counselor. Exhibit 11.
13. Mr. Unger's request for a new counselor was denied in a letter from Obie Kipper, Jr., Rehabilitation Area Manager, dated May 23, 1996. In this letter, Mr. Kipper noted Mr. Unger's "inappropriate behavior, " verbal abuse," and threats. Mr. Kipper encouraged Mr. Unger to obtain a psychological or psychiatric evaluation. Exhibit 12.
14. In a follow-up letter to Mr. Unger dated June 7, 1996, Mr. Kipper clarified his prior letter stating that Mr. Unger's case file had been closed because he "did not cooperate with [his] counselor." Specifically, his refusal to obtain a psychiatric assessment which had been requested because of a change in Mr. Unger's behavior.
15. In November, 1996, Mr. Unger again requested services from DRS. He was assigned to a different career counselor, John Nash, for evaluation. Because Mr. Unger's file had previously been closed, Mr. Nash determined that new "paper work" was needed before services could again be provided. Upon being told it was necessary, including a psychological evaluation, Mr. Unger became verbally abusive to Mr. Nash.
16. By written notice, Mr. Unger requested a contested hearing on the issue of "problems with DRS workers." Exhibit 14.
17. Mr. Unger was notified of the hearing by Notice of Hearing dated August 29, 1997. The hearing was scheduled for October 1, 1997 at 9:30 a.m. The hearing was delayed until 10:30 a.m. because Mr. Unger had not yet appeared. At 10:30, the hearing commenced and proceeded in his absence.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction pursuant to 29 U.S.C.A. § 722 (d) (Supp. 1995) and 34 C.F.R. § 361.57 and Minn. Stat. § 14.50.
2. The Department of Economic Security, Rehabilitation Services Branch, has fulfilled all relevant substantive and procedural requirements of law or rule.



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3. The burden of proof in this proceeding is upon the Appellant, Andrew Unger.
  
4. The Rehabilitation Act of 1973 provides, at 29 U.S.C.A. § 722(b)(1)(A)(i), that, for each person eligible to receive vocational rehabilitation services, an individualized written rehabilitation program (IWRP) be jointly developed, agreed upon, and signed by the individual and the vocational rehabilitation counselor.
5. Although an IWRP is created with the involvement of the individual with a disability, the counselor has the final say in areas relating the appropriateness of a particular service. Appeal of Wenger, 504 N.W.2d 794 (Minn. App. 1993) (citing Buchanan v. Ives, 793 F.Supp. 361 (D. Maine, 1991).
6. The IWRP is intended by the statute to be a comprehensive tool to assure provision of appropriate rehabilitation services for the individual. 29 U.S.C.A. §722(b)(1)(B)(ii) provides that the IWRP should be designed "to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities, of the individual.". The IWRP contains the specific long-term vocational goal, the specific intermediate rehabilitation objectives;; and the specific rehabilitation services to be provided, including, if appropriate, rehabilitation, on-the-job, and related personal assistance services. 34 C.F.R. § 361.46(a).
7. Appropriate rehabilitation services are defined as "any goods or services necessary to render an individual with the disability employable. . . ." 29 U.S.C.A. § 723(a)(1995 Supp.) These services include physical and mental restoration services.
8. The uncontested evidence demonstrates that the career counselors who worked with Mr. Unger believed, and had reason to believe based upon Mr. Unger's recent change in behavior, that psychological evaluation was necessary to go forward with an appropriate rehabilitation plan for Mr. Unger.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the appeal by Andrew Unger be denied.

DATED:

---

Susan Myklebye Williams  
Administrative Law Judge



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#### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. No transcript prepared.

#### MEMORANDUM

Mr. Unger, the Appellant, seeks this review because of “problems with DRS workers John Nash and Obie Kiper (sic).” Exhibit 14. The basis of his disagreement appears to be solely the requirement of the career counselors that he obtain psychological evaluation as part of his services through DRS.

Mr. Unger has received vocational services through DRS in the early 1990’s. He worked with Kim Hoffer as his career counselor. His file was closed shortly after it was opened because, after he applied for and was not offered a position, he did not request any other services. During this first period of working together, Hoffer did not observe any profane vocabulary, or hostile or violent behavior by Mr. Unger.

Mr. Unger requested services again in 1995 and he was again assigned to Kim Hoffer as his career counselor. Mr. Unger and Ms. Hoffer worked together to create an IWRP referring Mr.

Unger to AccessAbility for job training and placement services. In his second placement meeting in August, 1995 with AccessAbility, Mr. Unger became agitated and displayed hostile and violent behavior toward staff members. The behavior appeared to arise as a result of a fire drill in the AccessAbility building, delaying Mr. Unger’s meeting with the staff. During the fire drill, Mr. Unger became “agitated” and he demonstrated “hostile and physically violent behavior toward at least four staff.” Exhibit 6. As a result of his behavior, AccessAbility terminated their services and notified Ms. Hoffer.

Ms. Hoffer believed that this hostile and physically violent behavior was a change in Mr. Unger’s behavior and might be a result of a treatable psychological or psychiatric treatable condition. The behavior was incompatible with a successful placement in a work environment and also prevented Mr. Unger from obtaining training and placement services. Because of these issues, Ms. Hoffer suggested to Mr. Unger that he obtain psychological evaluation as part of his rehabilitation program. Mr. Unger refused to agree to an evaluation and responded with hostile and threatening comments.

Ms. Hoffer contacted Mr. Unger’s treating physician, with Mr. Unger’s permission, asking for his opinion and recommendation. Exhibit 8. Mr. Unger’s physician agreed that Mr. Unger “might benefit from some psychiatric assessments.” Exhibit 10.

Mr. Unger refused to follow through on any psychological assessments.

In November, 1996, Mr. Unger was assigned to a different career counselor, John Nash. During their short association, Mr. Unger and Mr. Nash spoke about the possible placement options for Mr. Unger. Mr. Nash also told Mr. Unger that a psychological evaluation would be necessary as part of a new IWRP. An evaluation would be necessary in part to assess Mr.



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Unger's needs for training and other services, and in part to provide information to service providers concerned for the safety of their staffs.

Mr. Unger refused any psychological assessments, refused to cooperate with a new application, and, in speaking with Mr. Nash, used profane and insulting language. When Mr. Unger would not control his language, Mr. Nash terminated the telephone conversation. Mr. Unger's present request for hearing followed.

The record does not reflect whether the hostile and assaultive incidents involving Mr. Unger were the result of a psychological condition. The record also does not reflect whether Mr. Unger's refusal to cooperate with an evaluation is a result of a psychological condition.

The record does, however, reflect that the request by DRS for a psychological evaluation is grounded in a reasonable belief that it would be helpful to Mr. Unger in addressing his employment needs and that it is reasonably required by service providers in order to provide appropriate services to Mr. Unger and also to protect their staff from the possibility of threat or violence.

The request by DRS counselors that Mr. Unger cooperate with a psychological evaluation is a reasonable part of his IWRP and the decision by DRS to close Mr. Unger's file for failure to cooperate was reasonable.

SMW





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## 2. Wenger Case

41200-7506-2  
 STATE OF MINNESOTA  
 OFFICE OF ADMINISTRATIVE HEARINGS  
 FOR THE MINNESOTA COURT OF APPEALS

In the Matter of  
 Scott H Wenger,

#c6-93-231

Relator,

FINDINGS OF FACT,  
 CONCLUSIONS OF LAW  
 AND DECISION

Vs

Commissioner of  
 Jobs and Training,

Respondent

The above-entitled matter came on before Administrative Law Judge Peter C. Erickson at 9:30 a.m. on Wednesday, February 17, 1993 in the Stearns County

Courthouse, St. Cloud, Minnesota. The record closed at the conclusion of the hearing, Scott H. Wenger, the Relator herein, 710 South Fourteenth Street, #24, St. Cloud, Minnesota 56301, appeared and testified on his own behalf. There were no other appearances at this proceeding

### ProCedural History

On January 7, 1993, Administrative Law Judge Jon L, Lunde issued a Decision which denied Scott Wenger's appeal of a decision by the Division of Vocational Rehabilitation Services to not recognize Mr, Wenger's self-employment goal as an appropriate goal in his Individualized Written Rehabilitation Program (IWRP), On January 25, 1993, the Assistant Commissioner of the Minnesota Department of Jobs and Training, Norena A. Hale, issued a final agency decision affirming the decision made by Judge Lunde to deny Mr. Wenger's appeal Commissioner Hale stated in her decision that Mr. Wenger had two options: (1) to appeal the decision to the Minnesota Court of Appeals; or (2) accept the decision and continue to pursue his vocational rehabilitation program. The second option stated that no services could be provided concerning Mr. Wenger's rehabilitation program "unless it is based on an IWRP that is mutually agreed upon". Subsequently, Mr. Wenger filed a Petition for Writ of Certiorari with the Minnesota Court of Appeals dated February 3, 1993. Attached to the Petition was an affidavit of Mr. Wenger filed pursuant to Minn. Stat. 563.01 requesting that he be permitted to proceed 'in forma





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pauperis". The affidavit stated that Mr. Wenger received assistance from Social Security in the form of social security disability payments; that he received food stamps; that he was indigent; and that he was financially unable to pay court costs, fees, security for costs, and costs of preparing and copying written transcripts of the hearing,

On February 5, 1993, the Chief Judge of the Minnesota Court of Appeals, Paul H. Anderson, issued an Order requiring, in part, the following

On on before February 22, 1993, Assistant Commissionet Hale or her delegee, acting as a special referee of the Minneosta Court of Appeals, shall submit and certify to this court appropriate findings and determinations, The assistant commissioner or her delegee may convene a

hearing to take evidence on this matter, if the current record is inadequate to make findings.

The court specified the issues and findings which were required and the process to make those findings as follows;

Before directing the State of Minnesota to pay the expenses of relator in obtaining the record and reproducing the briefs, it is essential that

determinations be made whether (a) the action is of a frivolous nature and (b) the relator is able to pay the expenses of appeal,

Assistant Commissioner Norena Hale, who rendered the final decision in this matter, or her delegee in the Office of Administrative Hearings, is believed to be a suitable person to act as a referee of the Minnesota Court of Appeals for the purpose of making findings on these matters

Pursuant to the above-Order, the Division of Rehabilitation Services (DRS) contacted the Office of Administrative Hearings and requested that an Administrative Law Judge conduct a hearing to take evidence on the issues set forth in the court's Order and make findings and determinations on those issues, Consequently, this hearing was conducted by the undersigned and evidence was taken upon which the findings and determinations herein are based in addition to the record already made in this proceeding,

NOTICE



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The Judge reads the Order from the Court of Appeals as directing that this decision be a final decision on the issues presented. Consequently, this decision will be served on Mr. Wenger, Assistant Commissioner Hale, and the Chief Judge of the Minnesota Court of Appeals,

Based upon all of the proceedings herein, the Administrative law Judge makes the following-

#### FINDINGS OF FACT

##### Relator's Ability to Pay the Expenses of this Appeal

1. Scott Wenger's total monthly income consists of social security disability income in the amount of \$781. In addition, Mr. Wenger currently receives food stamps in the amount of \$28 per month, however, beginning March 1, 1993, that amount will be reduced to \$13 per month

2 Mr. Wenger currently resides in Section 8 HUD subsidized housing and has a monthly rent in the amount of \$214. On January 19, 1993, Mr. Wenger

-2-

received a letter from the Director of Housing Services informing him that his lease agreement would be terminated effective February 28, 1993 based upon outstanding rent due in the amount of \$422, Mr. Wenger has not paid February rent in an additional amount of \$214. At the current time, Mr Wenger has no resources available to pay the overdue rent.

3, Mr. Wenger drives a 1986 Toyota Camry which was purchased by his mother Mr Wenger owes his mother for the purchase price of the car.

4, In addition to using his food stamps to purchase food, Mr. Wenger buys food at the food shelves and eats one meal per day at the Salvation Army.

5. Mr. Wenger pays a monthly car insurance premium of \$31.06. He currently has debts exceeding \$1,400 for repairs made to his car Mr Wenger spends approximately \$60 per month for transportation expenses

6 Mr. Wenger's utilities are included in the rent payment



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7 Mr. Wenger attends two psychotherapy sessions per month for which he pays \$20 per session. Mr. Wenger has a mental disability, dysthymic disorder (depression), which is the basis for his eligibility for services from DRS.

8. Mr. Wenger has sold blood five times since November 3, 1992 in an effort to secure more income.

Whether the Action is of a Frivolous Nature

9 The findings of fact issued by Judge Lunde reveal the following,

1. In July of 1991, Mr. Wenger and a certified rehabilitation

counselor, John Schlichting, prepared an IWRP which stated that Wenger's vocational goal was to obtain employment as a programmer/analyst or in a related position. Mr. Wenger had previous job experience in computer programming and had earned a bachelor of science degree in computer information systems

2, In very early 1992, Mr. Wenger told Schlichting that he was interested in investigating the possibility of a small business venture

Subsequently, Wenger decided to produce and sell motivational tapes under the name "New Age Tapes". Mr. Wenger continued in his efforts to produce and sell motivational tapes in early 1992 and discussed receiving financial support for

this venture with Mr. Schlichting

3. In May, June and July of 1992, Mr. Wenger attempted to have his IWRP revised to state as a goal: "to successfully market educational, motivational, and self-help media to the general public in the U.S. and

abroad." Mr. Schlichting refused to offer Mr. Wenger any rehabilitation assistance in his venture and told Mr. Wenger that his self proclaimed goal was not a viable vocational objective

4, In mid-August 1992, Mr. Wenger had completed two tapes in marketable cassette form which were titled: "The New Level", relating to linear versus non-linear thinking; and "Relaxation", relating to hypnotic induction and wealth imagery, In addition, two other tapes had been produced



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on reel-to-reel "Communication", relating to personal, business and social communication; and "Self-esteem", relating to the development of healthy self-esteem. A fifth tape on problem solving was scheduled for recording on September 8. However, the tape on relaxation was plagiarized and could not be sold

5. Mr. Wenger has no training in marketing, advertising, or running a business, and he has never been self-employed.

6. Mr. Wenger has no training or expertise in motivation, communication or education. He has never published articles or given speeches on those subjects, and was unknown to the general public

7. There was no evidence offered in the record of the initial hearing to show that Mr. Wenger's proposed business venture was economically feasible or would provide him with gainful employment,

8. The hearing record does show that Mr. Wenger is employable as a computer programmer or in a similar position and may be able to retain employment in that area with ongoing counseling.

9. Mr. Wenger appealed the DRS decision not to amend his IWRP to include his vocational goal of selling educational and motivational tapes and supporting him in that endeavor.

10. Judge Lunde concluded that Mr. Wenger had failed to show that his proposed business venture was economically feasible or that there was a reasonable expectation that Wenger would be able to obtain and retain gainful self-employment if DRS adopted a revised IWRP containing the vocational goal proposed by Mr. Wenger,

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Assistant Commissioner for Vocational Rehabilitation of the Minnesota Department of Jobs and Training have authority in this matter pursuant to Minn. Stat. 266A.03 and 14.50 and

the remand Order from the Minnesota Court of Appeals dated February 5, 1993,

2. Mr. Wenger has shown that he is not able to pay the expenses of this appeal



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3. Based upon the findings made by Judge Lunde and his analysis of the issues presented, the Judge concludes that this action is of a frivolous nature.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

#### DECISION

IT IS HEREBY DETERMINED that Mr Wenger's Petition to proceed in forma pauperis is DENIED

-4-

Dated this      day of February, 1993

PETER C. ERICKSON  
Administrative law Judge

#### MEMORANDUM

Minn. Stat 563.01, subd. 3 sets forth standards for an individual to

proceed in forma pauperis in legal actions. One criteria is that the individual is "financially unable" to pay the costs associated with the action. In this case, it is primarily the cost of transcription of the hearing which is at issue. The statute states that persons who receive public assistance are, prima facie, financially unable to pay and also persons whose annual income is not greater than 125% of the poverty guidelines established by the federal government. Mr. Wenger's receipt of social security disability income is not "public assistance" as this Judge understands that term. Also, Mr. Wenger's monthly income of \$781 is slightly more than 125% of the poverty guidelines established by the federal government (a guideline of \$6,810 multiplied by 125% equals \$8,512.50). However, Mr. Wenger is heavily in debt for medical services which he incurred as a result of his mental disability and currently has no significant resources to even pay the overdue rent on his apartment. Consequently, the Judge has concluded that Mr. Wenger does satisfy the criteria of indigency; that he is not financially able to pay the costs of this appeal.

The Judge has concluded that Mr. Wenger's proposed vocational goal of selling educational and motivational tapes, when seen in the light of his vocational experience, training and present economic and psychological condition, is hardly realistic. Judge Lunde made that determination abundantly clear in his decision issued on January 7, 1993. There was nothing on the record of the hearing conducted



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by Judge Lunde to suggest that Mr. Wenger's vocational goal was either economically feasible or appropriate for a person with his education and background. The Judge does not want to belittle Mr. Wenger's sincere endeavors at self-employment, however, the issue here is a realistic evaluation of an appropriate rehabilitation program which will be paid for by DRS. Mr. Wenger's action below and appeal herein have no factual or legal basis and must, therefore, be considered frivolous.

P.C,E



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**COMPLAINT - LAW:**

**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATION SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON D.C. 20202  
TECHNICAL ASSISTANCE CIRCULAR  
RSA-TAC-00-02  
July 24, 2000**

**TO: State Vocational Rehabilitation Agencies (General)  
State Vocational Rehabilitation Agencies (Blind)  
Client Assistance Programs  
Regional Rehabilitation Continuing Education Programs  
American Indian Vocational Rehabilitation Service Programs  
RSA Senior Management Team**

**SUBJECT: Self-employment, Telecommuting, and Establishing a Small Business as Employment Outcomes Statutory and Regulatory Citations: the Rehabilitation Act of 1973, as amended; the Workforce Investment Act of 1998; 34 CFR Part 361.**

**PURPOSES:**

**The Rehabilitation Act (Act) Amendments of 1998, which are contained in Title IV of the Workforce Investment Act, include two specific references to self-employment, telecommuting, and establishing a small business as viable employment outcomes under the State Vocational Rehabilitation (VR) Services Program. One purpose of this Technical Assistance Circular (TAC) is to highlight these changes.**

**A second purpose of this TAC is to bring attention to three recent publications that contain effective and proven methods for utilizing self-employment, including the establishment of a small business, as an employment outcome.**

**BACKGROUND**

The U.S. Department of Labor reported that in 1994 approximately 12 percent of the American workforce were self-employed. Data from the 1990 Census indicated that





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approximately 12 percent of the individuals who reported a work disability also reported being self-employed.

While self-employment has always been a permissible employment outcome under the Act, data from the State VR Services Program indicate that, of those individuals who achieve an employment outcome, 3 percent achieve an employment outcome in the self-employment category. The results of several recently completed demonstration projects on "Choice" (see 2 RSA-IM-98-16, July 7, 1998) indicate that vocational rehabilitation consumers are interested in self-employment outcomes. The percentages of individuals participating in "Choice" projects who sought self-employment were higher than the percentage of individuals in the State VR Services Program who achieve self-employment outcomes.

Two recent reports, one by the XXIV Institute on Rehabilitation Issues (1998) and the other by the Presidential Task Force on Employment of Adults with Disabilities (November 15, 1998), concluded that self-employment outcomes are an underutilized, and potentially productive (given the changing nature of the U.S. workforce) source of employment opportunities for individuals with disabilities. These reports found that technological advances, especially in the areas of computers and telecommunications, have removed many of the obstacles that previously hampered individuals with disabilities from successfully entering self-employment.

The language in the Rehabilitation Act Amendments of 1998 regarding self-employment, telecommuting, and establishing a small business makes it clear that Congress intends these employment outcomes to be available in assisting individuals with disabilities to obtain employment opportunities consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These inclusions also make it explicit that Congress intends self-employment, telecommuting, and establishing a small business to be viable employment outcomes, and that the State VR Services Program is to have the authority and ability to provide the services necessary to support those outcomes when they are "described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual." (§103(a))  
The Rehabilitation Act Amendments of 1998

There are two sections of the Act, as amended in 1998, where self-employment, telecommuting, and establishing a small business are cited as appropriate employment outcomes.

The first instance is at §7(11)(C), under the definition of an employment outcome:  
The term "employment outcome" means, with respect to an individual--...  
(C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational outcome of self-employment,





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telecommuting, or business ownership), in a manner consistent with the Act.

The second instance is at §103(a)(13), among the vocational services to be provided under the Act: (13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

The Rehabilitation Services Administration has received several requests for clarification of the meaning of the phrase “to the extent such resources are authorized to be provided through the statewide workforce investment system....” The phrase refers to the manner in which the Act authorizes the State VR Services Program to “otherwise provide resources,” to individuals pursuing self-employment, telecommuting, or establishing a small business, and, in effect, places a condition on the provision of resources other than “technical assistance and other consultation services to provide market analyses” and the “develop[ment] of business plans” to eligible individuals. The condition is that the other “resources” must be provided in a manner consistent with what is authorized to be provided through the statewide workforce investment system of the WIA. This condition does not apply to the provision of any other vocational rehabilitation service listed in section 103(a) of the Act.

Each statewide workforce investment system must include a “State plan” which describes the employment and training activities that are to be carried out with the funding received under the WIA (see §112 of WIA). The employment and training activities to be provided under each statewide workforce investment system are to be determined individually by each State, will vary depending on the needs and economic conditions of each State, and may vary between local areas within each State (see §116 of WIA). As the extent and scope of the employment and training services to be provided under the statewide workforce investment system will vary from State to State, each State VR agency must determine what activities the WIA State plan calls for in their State (and localities within their State, as appropriate), and ensure that these resources are also available and provided (as appropriate) to eligible individuals in a manner consistent with the statewide workforce investment system. Based upon long-standing policy, an individual with a disability cannot be required to take out a loan to pay for any vocational rehabilitation service. However, there may be circumstances where the individual elects to do so. In such instances, the Department has determined that State

VR Services Program funds may be used to guarantee (but not provide) a loan to an individual with a disability receiving VR services to enable the individual to pay for certain items contained in the individualized plan for employment. Included among those items may be loans for the purpose of establishing a small business or for equipment needed to enter self-employment. The loans must be for the receipt of a VR service that the State agency may



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provide to the consumer under the law. State VR Services Program funds may be used to guarantee the repayment of the unpaid balance of principal (but not the accrued interest) on the loan. In addition, the provisions of 34 CFR 361.54 - Participation of individuals in cost of services based on financial need may apply if a State employs such a procedure. As stated at 34 CFR 361.50(b)(3), the State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

### **Recent Publications**

To implement the intent of Congress for self-employment, telecommuting, and the establishment of a small business to become viable employment outcomes under the State VR Services Program, the rehabilitation community must continue to define and refine the nature and scope of vocational rehabilitation services to be provided to eligible individuals pursuing those outcomes, and the role of the vocational counselor in providing vocational rehabilitation

services to those individuals. Vocational rehabilitation counselors require assistance and guidance to support clients in exploring the marketplace, developing a viable business plan, providing necessary accommodations, obtaining items necessary for business start-up,

connecting clients with community resources (including funding sources), and other activities related to entering self-employment of establishing a small business.

Three recent documents present information on effective methods of providing VR services to individuals with disabilities entering self-employment and establishing small businesses.

The XXIV Institute on Rehabilitation Issues produced a document titled "People With Disabilities Developing Self-employment and Small Business Opportunities" (1998). This document is intended as a tool for VR counselors to assist individuals with disabilities, and a resource for VR consumers who wish to pursue self-employment and small business opportunities. This document also contains references that can provide additional assistance.

**Copies of this document may be obtained from:  
Region VI Rehabilitation Continuing Education Program  
P.O. Box 1358  
Hot Springs, Arkansas 71902  
Telephone: 501-623-7700  
Fax: 501-624-6250**

(Note: The Region VI Rehabilitation Continuing Education Program maintains a web site on self-employment and entrepreneurship for individuals with disabilities at <http://www.cei.net/~regionvii/business.htm>.)

The "First Report of the Presidential Task Force on Employment of Adults with Disabilities" (November 15, 1998) contains the findings of the Work Group on the Small Business and Entrepreneurial Opportunities which provides information on what activities are



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currently necessary to further the use of this employment outcome. This document also provides references that may be useful to State VR agencies in their efforts to more effectively utilize self-employment and the establishment of a small business as employment outcomes.

"Getting Down to Business: A Blueprint for Creating and Supporting Entrepreneurial Opportunities for Individuals with Disabilities" (April, 2000) addresses the current status of

small business and self-employment opportunities for individuals with disabilities and offers recommendations for addressing barriers to business ownership. The findings in this report build upon the proceedings of the National Blue Ribbon Panel on Self-employment, Small Business and Disability, convened by the President's Committee on Employment of People with Disabilities in July 1998. This publication contains profiles of successful entrepreneurs, an overview of the business planning process, useful web sites, and entrepreneurial opportunities for individuals with disabilities.

**Copies of these latter two documents may be obtained from:  
Presidential Task Force on Employment of Adults with Disabilities  
Room S2220D, 200 Constitution Avenue  
Washington DC 20210**

Telephone (voice): 202-693-4939, (TTY): 202-693-4290, Fax: 202-693-4929

Questions regarding this Technical Assistance Circular should be directed to the RSA Regional Commissioners.

Fredric K. Schroeder, Ph.D., Commissioner

### **COMPLAINT - STATE REHABILITATION COUNCIL MEMBERS:**

#### **State Rehabilitation Council Members:**

<http://www.mnworkforcecenter.org/rehab/councils/src/src-memb.htm>

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**Do you have written information that you think will help us understand your complaint?**

Yes YES - a lot of documentation No

The Information can be sent to you by e-mail - acrobat reader documents, by Ms. Duchene. Most of it is on court records asnd can be investigated independently.





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You will be contacted with instructions for submitting this information  
(please do not send original documents). **OK**

## **7. Your complaint must be filed within 180 days of the discriminatory action**

The laws that we enforce require that complaints be filed with our office within 180 days of the alleged discriminatory event. If any of the alleged discriminatory actions took place more than 180 days before the postmark or receipt date of this complaint, you may request a waiver of the 180-day limit.

- When did the last act of discrimination occur?
  - Enter the date: (mm/dd/yyyy) **Ongoing, to date.**
  - **DISCRIMINATORY ACTS HAVE TAKEN PLACE FROM 1999-2001 CONTINUING TO DATE!**
- Are you requesting a waiver of the 180-day filing time limit for discrimination that occurred more than 180 days before the filing of this complaint?
- **Yes YES, in part, as necessary and appropriate No**
- Reason for not filing complaint before 180 days.
  - **Litigation was ongoing and reasonable outcome was anticipated through this litigation, however, the civil rights violations increased rather than decreased even though the litigation was resolved in Ms. Duchene's favor, through unsuccessful.**
  - **There has been a PATTERN of willful violation of civil rights over a period of time, and we needed to have sufficient examples of this to demonstrate that pattern of continuing violations.**
  - **It has become clear that the discrimination is willful and malicious, and that the relentless nature of the actions will not abate without more serious actions against**



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perpetrators and sufficient evidence was not previously available.

**8. What would you like the institution to do as a result of your complaint — what remedy are you seeking?**

**1) VRS –**

- a. Disciplinary action against individual perpetrators at supervisory level, Ms. Giles and Ms. Pisa,
- b. Outlines, guidelines for strong penalties for future violations, regarding this individual matter with Ms. Duchene
- c. Order improvements and General Outlines and Guidelines to prevent future violations, particularly those in which attempts are made to destroy small business owned by disabled clients, past or current.

**2) CAP –**

- a. Disciplinary action
- b. Order improvements and Guidelines for alternate representation of VRS clients, in circumstances in which the agency has a conflict of interest.
- c. Order Improvements and Guidelines for attorneys representing small business run by VRS clients which ensure the attorney acts in a manner that is in the best interest of the company owned by the VRS client.

**3) College (MSCI) –**

- a. Requirement that disability education and training for staff be implemented so that college staff are knowledgeable about the Rehabilitation Act of 1973, and can respond to disabled students without the fear that comes from ignorance of the law.
- b. Rectify discriminatory acts and grades based on discriminatory acts, regarding Ms. Duchene.



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**9. Please read the Information About OCR's Complaint Resolution Procedures, Office for Civil Rights Notice About Investigatory Uses of Personal Information, and Consent Form. All these documents are downloadable. Before we can**

**complete initial processing of your complaint, we will need your signed consent authorizing us to proceed. Please sign and date A or B on the consent form and mail it to the OCR Enforcement Office responsible for your complaint.**