



March 7, 2018

Assistant Secretary Johnny Collett
Deputy Assistant Secretary Kim Richey
Office of Special Education and Rehabilitative Services
U.S. Department of Education
Washington, DC 20202

Dear Assistant Secretary Collett and Deputy Assistant Secretary Richey:

On behalf of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force, the undersigned organizations are writing regarding the Department of Education's guidance associated with the Workforce Innovation and Opportunity Act (WIOA). CCD is a coalition of national disability rights, advocacy, consumer, provider and self-advocate organizations representing this nation's 57 million people with disabilities. Together we advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of people with disabilities in all aspects of society, including employment.

As supporters of WIOA, we believe strongly in its mandate that the employment supports, workforce development and vocational rehabilitation systems must provide all people with disabilities opportunities to achieve competitive integrated employment (CIE). Many of our organizations helped develop the Department's original regulations on integrated work settings promulgated in 1997 and participated in the recent rulemaking that led to the 2016 WIOA implementing regulations from the Department, which reaffirmed the 1997 regulations.

We understand that confusion has arisen in the field around implementation of some aspects of the new regulations as a result of RSA's interpretation and guidance, particularly the January 18, 2017 "Integrated Location Criteria of the Definition of 'Competitive Integrated Employment' FAQs" issued by the Rehabilitation Services Administration (RSA). Specifically, some organizations, associated non-profits and community rehabilitation programs have experienced as a result of this FAQ, some state Vocational Rehabilitation (VR) agencies holding back on making referrals to community rehabilitation providers (CRPs) and nonprofit agencies (NPAs) that offer employment to people with disabilities through their JWOD or state use contracts, without individually examining whether the potential job offerings meet the regulatory definition of CIE. The confusion has raised questions about whether the WIOA regulations should be re-opened. We strongly disagree that such a step is necessary at this time. Rather, we offer the following suggestions to update and clarify the FAQ which we believe can solve the underlying

confusion without undermining the longstanding position of RSA and the disability community in favor of competitive integrated employment.

We recommend that RSA update the FAQ to clarify the following points:

- **Re-emphasize the requirement that there must be an individual analysis of each work setting in which a VR client is interested in accepting a position**

The FAQs currently state “VR agencies – not OSERS – must determine on a *case by case basis* in light of the facts presented whether an employment setting meets both criteria for an integrated location.....the VR agency is responsible for determining whether the jobs performed by individuals with disabilities employed by community rehabilitation programs satisfy the definition of ‘competitive integrated employment’ when individuals seek the VR agency’s assistance in obtaining these positions.” We think that in an updated FAQ, RSA should emphasize this case-by-case requirement and make clear to VR agencies that they cannot have policies that per se exclude work settings simply because they have a JWOD or state purchase program contract.

- **Remove references to JWOD and/or state purchase programs in the FAQ**

The FAQs currently include several examples referring to positions funded by JWOD and/or state use program contracts. We are concerned that these specific references have led some state VR agencies in the field to believe that these settings are per se prohibited and can never meet the definition of CIE. We believe that removing the specific reference to JWOD, state purchase programs and ratio-based programs in an updated FAQ, combined with the other steps listed in this document, would help address that misunderstanding.

- **Clarify that state VR agencies can make referrals to a job that does not meet the regulatory definition of CIE (even though it will not count as a successful placement) if such a referral is the client’s informed choice**

An updated FAQ should remind state VR agencies that their clients may make an informed choice to take a position at work site that does not meet the CIE requirements – only that the VR agency cannot count that as a successful placement. And, that the state VR agencies may, based on the informed choice of an individual, make a referral to a setting that does not meet the regulatory definition of CIE. The updated FAQ could also emphasize that it is the responsibility of state VR agencies to inform such clients of employment supports available through other agencies and departments, even if the short-term employment supports available through VR for successful placements are not available.

- **Offer technical assistance to state VR agencies**

We believe that state VR agencies could benefit from additional technical assistance from the Department related to implementation of an updated FAQ. This technical assistance could address, among other things, best practices for conducting an individual assessment of a setting and strategies that community rehabilitative programs can use to adjust settings that do not

currently meet the requirements for CIE into compliance with the definition. Any such technical assistance should make clear that JWOD and state use positions should be reviewed on a case-by-case basis.

In sum, we believe the above strategies would address the confusion that currently exists in the field about implementation of the new WIOA regulations. To be clear, we do not believe it is necessary to reopen the regulations for WIOA at this time. However, we certainly support efforts to address elements of agency guidance that need further clarity and would welcome the opportunity to work with your office in that endeavor.

Sincerely,

ACCSES

American Council of the Blind

Association of People Supporting Employment First

Association of University Centers on Disabilities

Autism Society of America

Easterseals Inc.

Goodwill Industries International

Institute for Educational Leadership

National Association of State Directors of Developmental Disabilities Services

National Disability Institute

National Disability Rights Network

National Down Syndrome Congress

National Industries for the Blind

National Organization on Disability

Paralyzed Veterans of America

RespectAbility

SourceAmerica

TASH

The Arc of the United States

United Spinal Association