



September 20, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202

Re: Docket ID: ED-2017-OS-0074, Evaluation of Existing Regulations

Dear Ms. Malawer:

Disability Rights Nebraska is the designated Protection and Advocacy organization for Nebraska. We would like to take this opportunity to respond to the recent federal initiative by the United States Department of Education's Regulatory Reform Task Force to review existing regulations promulgated by the Department pertaining to students with disabilities.

We understand the National Disability Rights Network has submitted a letter in response to the proposed regulatory review and reform in which they caution against sweeping modification or removal of these regulations at this time. Disability Rights Nebraska agrees with the National Disability Rights Network and supports their position in the letter.

Disability Rights Nebraska would like to expand on what was submitted by the National Disability Rights Network; in particular we believe that two of the regulations contained in the Department of Education's Regulatory Reform Task Force's list of regulations to be reviewed should not be altered at this time.

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The Protection and Advocacy System in Nebraska

1. Part 397 of Title 34 are regulations implemented by the Department of Education designed specifically to limit placement of students below age 21 in vocational programs which pay a subminimum wage. The premise behind subminimum wage programs has been that certain individuals may need additional training to even be able to reach employment in a competitive environment. Sadly, this premise has been used to assume that individuals with significant disabilities require this “protection” of additional training, only to have such individuals languish in such “programs” for decades. The Individuals with Disabilities Education Act (IDEA) has long recognized the importance of moving individuals from a school environment to vocational objectives, and has treated this transition as an essential part of the educational process. Unfortunately, the traditional practice of individuals with significant disabilities spending their transition period provided by the IDEA in subminimum wage sheltered workshop programs actually undermines their education. The provisions of Part 397 are in place to decrease this traditional practice. Research indicates that early participation of individuals, even individuals with significant disabilities, in integrated vocational environments early, as promoted by Part 397, actually increases the overall success rate for that individual over time.¹

Indeed, the approach promoted by Part 397 is consistent with the objectives of the Social Security Administration's own long-standing work incentive, the Student Earned Income Exclusion, which is designed to promote competitive inclusive work activity in students at an early age because doing so actually increases the probability that individuals with disabilities actually leave the Social Security disability program. To undermine the transitional vocational practices supported by Part 397 would, in effect, weaken the effectiveness of the Department of Education's own practices.

¹ Hall, S. A. (2017), “Community Involvement of Young Adults with Intellectual Disabilities: Their Experiences and Perspectives on Inclusion”, *Journal of Applied Research in Intellectual Disabilities*, Volume 30, Issue 5, pp. 859–871, available at <http://onlinelibrary.wiley.com/doi/10.1111/jar.12275/full> and Mamum et al (2017), “Impact of Early Work Experiences on Subsequent Paid Employment for Young Adults with Disabilities”, *Career Development and Transition for Exceptional Individuals*, August 16, 2017, available at <http://journals.sagepub.com/doi/pdf/10.1177/2165143417726302>

2. Part 400 of Title 34, “Vocational and Applied Technology Education Programs—General Provisions,” affects a large variety of programs designed to promote technologically vibrant vocational programs.

Promotion of technology education programs assists in the development of technologies which assist individuals with disabilities in their daily lives. The IDEA has long required that Individualized Education Plans include consideration of assistive technology. That concept has moved from considering only “big ticket” items like Dynavox speech systems to utilizing hand-held devices that are substantially less expensive and easy to use by students.

As Education Secretary DeVos recently commented to a gathering of the nation’s special education leaders, “We should celebrate the fact that unlike some countries in the world, the United States makes promises that we will never send any student away from our schools. Our commitment is to educate every student. Period. It’s but one of America’s many compelling attributes.” Continued support of the provisions mentioned above, and indeed the position articulated by the National Disability Rights Network, act to achieve the very objectives articulated by Secretary DeVos. As such, we would strongly advise that the Department of Education preserve the regulations identified by the Department of Education’s Regulatory Reform Task Force and the National Disability Rights Network.

If you have any further questions, or would like additional clarification, please do not hesitate to contact our office at your earliest convenience.

Sincerely,

Eric A. Evans, Ph.D
Chief Executive Officer
Disability Rights Nebraska