



September 20, 2107

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

Dear Assistant General Counsel Malawer:

Thank you the opportunity to provide public comment advising the Secretary of Education about regulations or guidance that should be repealed, replaced, or modified under the Regulatory Reform Project initiated under President Trump. RCPA represents over 330 members in Pennsylvania, consisting mostly of human service providers, many of which provide employment and/or vocational services to people with disabilities. RCPA's comments are focused on employment opportunities for people with disabilities, particularly related to the Workforce Innovation and Opportunity Act (WIOA). Our comments are as follows:

1. Rehabilitation Services Administration (RSA) Frequently Asked Questions (FAQs). The definition of "competitive integrated employment" (34 CFR §361.5(c)(9)) was rewritten in a way that changed what Congress intended, narrowing what qualifies as competitive integrated employment. RCPA encourages the US Department of Education to direct RSA to rescind the FAQs and place primacy on the actual language contained in the federal WIOA statute as it relates to whether a job meets the definition of competitive-integrated employment. Duly promulgated statute and regulation places authority with the vocational rehabilitation (VR) counselor to make a professional judgment about whether a job meets the definition of competitive-integrated employment, especially as it relates to the question of "integrated". The FAQs, on the other hand, include limitations that go beyond the statutory and regulatory definition of competitive-integrated employment. The VR counselor (many [or all] of whom in Pennsylvania hold a Master's Degree in Rehabilitation Counseling) is in the best position to make the judgment - on an individualized basis - and should not exclude employers or groups of employers based simply on an FAQ document that was not duly promulgated as a regulation or passed by Congress as a statute. Employment opportunities that pay minimum wage or higher and meet the integration test contemplated by Congress are being excluded merely due to the whim of federal bureaucrats. RSA should place primacy on the statutory and regulatory language and trust the professional judgment of the VR counselor to do what is in the best interest of his or her customer.
2. Section 511 Interpretation. RCPA encourages the US Department of Education to direct RSA to issue guidance to Designated State Units (DSUs) for vocational rehabilitation to treat adults with intellectual disabilities of any age the same as any other vocational rehabilitation customer by closing their case and/or making an ineligibility determination when the individual, after being referred to the DSU and receiving information about what it has to offer, makes an

informed decision to not accept additional vocational rehabilitation services. Adult men and women with intellectual disabilities must be given the dignity and respect of having their decisions about their own life honored. Unfortunately, some DSUs are interpreting Section 511 of WIOA in a way that prohibits a person under age 25 from being paid subminimum wage work unless the individual is not only referred to the DSU and counseled but accepts VR services over a period of time. This is happening notwithstanding situations in which the person no longer wants to receive VR services. Any other customer of the vocational rehabilitation system would have their wishes honored and either be determined ineligible and/or have their case closed if he/she decided not to continue with VR services. RCPA supports competitive-integrated employment for people with disabilities and supports the provisions of the WIOA that expose people with intellectual disabilities to the vocational rehabilitation system and the possibilities that come with it, but exposure to competitive-integrated employment services is different than denying the subminimum wage alternative if the person in good faith opts to accept VR services no longer.

3. DSU data collection requirements. RCPA supports requirements for DSUs to collect relevant data on outcomes and services provided, but we are concerned that there are so many new data collection requirements imposed on DSUs that they are having to place excessive amounts of time, energy, and funding on data collection and reporting rather than emphasizing customer services and outcomes. Please prioritize the data the US Department of Education needs from DSUs and then relax some of the unnecessary and burdensome requirements on which DSUs are spending valuable time.
4. Pre-Employment Transition Services (P.E.T.S.).
 - a. Group Counseling. RSA's policy of making DSUs exclude any student who does not have a documented disability from group P.E.T.S. counseling is unnecessary, backward, and excessive. First, it is reminiscent of segregated training for students with disabilities. Second, WIOA requires DSUs to provide P.E.T.S. to students who are "potentially eligible." Yet, RSA is requiring DSUs to exclude any student from group counseling without a documented disability, and furthermore it is requiring DSUs to document names of participants in the training and secure parental permission before participating. These limitations and requirements place a chilling effect on student engagement and denies students valuable information about a service that could help them get or keep a job. WIOA intended that more students, not fewer, become exposed to VR services under P.E.T.S. Please reverse RSA's existing policy.
 - b. Transportation. RSA policy has led to DSUs believing they are not allowed to permit students from utilizing transportation as a form of work readiness training, as part of a job exploration plan, or as a way to develop self-advocacy skills. Transportation is foundational to getting and keeping a job, yet RSA rules say no. This must be reversed. The US Department of Education should direct RSA to become more creative and find ways to say "yes" to needed services rather than always find a way to say "no."
 - c. Assistive Technology. RSA's prohibition on assistive technology is similarly backward and unfortunate relative to its transportation policy. Assistive technology gives students

with disabilities opportunities to pursue job exploration, develop job-readiness skills, and succeed during work-based learning experiences. RSA should encourage DSUs to find innovative ways to incorporate assistive technology into P.E.T.S., not prohibit it.

5. The US Department of Education should direct its Office of Special Education and Rehabilitation Services (OSERS) to require, as a condition of accepting federal Individuals with Disabilities Education Act funding, state education agencies to find a way that would allow a parental consent document to be applicable for both education and vocational rehabilitation services at the state and local level for students with disabilities. It is our understanding that LEAs believe they are prohibited by law to share student information with vocational rehabilitation offices (under the jurisdiction of the DSU) without a separately signed release from the parent, yet this duplicative system does little else but cause frustration and administrative burden. This usually results in students who have a need for vocational rehabilitation to be denied services that could help them get and keep a job. At the very least, the OSERS should develop a model agreement that state education agencies and DSUs could consider signing that would allow information about students with disabilities to be shared between LEAs and local vocational rehabilitation offices in a timely, protected, and confidential manner without risking a violation of law.

In closing, we respectfully request that the Secretary of Education direct RSA to be more user-friendly, reduce the number of rules it developments, and enforce the rules it does have in a manner that encourages and promotes flexibility and innovation at the state and local levels. Unfortunately, RSA has a reputation of being a bureaucracy rather than a federal agency that exhibits leadership. It is known for rules – ones that often do not make sense or needlessly increase administrative burdens and stifle innovation. When state DSUs request guidance from RSA, quick and clear responses rarely come. My understanding is that DSUs are usually afraid to ask RSA questions because they know they will either get an answer they do not want or they will get no answer at all. The opposite should be true. RSA should create an environment in which DSUs happily seek guidance from RSA because they know the answers they get will be prompt and smart, allowing flexible and innovative approaches to be taken at the state level.

In closing, there are a lot of talented and committed people in the vocational rehabilitation system – they need an RSA that encourages, supports, and innovates. On behalf of RCPA, we urge the Secretary of Education to inject new leadership and new energy into RSA and change its culture from one of rigidity and intransigence to one that results in flexibility, unique solutions being applied to unique situations, and excellent customer service when dealing with DSUs.

Sincerely,



Stephen H. Surovec
Chief Operating Officer &
Director, Intellectual/Developmental Disabilities Division