ACCSES NJ

September 15, 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: **ID:** ED-2017-OS-0074-0001

Dear Ms. Malawer:

ACCSES NJ, is the principal trade association representing Community Rehabilitation Programs in New Jersey. ACCSES NJ's 36 member agencies serve over 88,000 NJ citizens with disabilities and directly employ more than 14,000. We applaud the efforts of Secretary DeVos in seeking input on regulations that may be appropriate for repeal, replacement, or modification. This is in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

With respect to regulations and sub-regulatory guidance issued by the U.S. Department of Education (DOE)/ Rehabilitation Services Administration (RSA), ACCSES NJ is very concerned that regulations implementing the Workforce Innovation and Opportunity Act (WIOA) not only exceeded the scope of the act, but most importantly have resulted in reduction of job creation activities and in many cases have caused the elimination of employment through the AbilityOne program and the NJ Rehabilitation Facilities Set-Aside Act. ACCSES NJ believes this has occurred due to regulations implementing the integrated settings criteria under the definition of competitive integrated employment contained in rule [34 CFR 361.5(c)(9)(ii) and 361.5(c)(32)(ii)].

Specifically, the definition of "competitive integrated employment" (34 CFR §361.5(c)(9)) was rewritten during the regulatory process. The Department of Education changed what Congress intended by narrowing what qualifies as competitive integrated employment by adding the condition "is at a location typically found in the community." This condition is not specifically established in the law. The regulatory definition of "competitive integrated employment" should be eliminated and replaced with the definition that appears in the WIOA statute.

In both the definition of "competitive integrated employment" (CIE) and the definition of "integrated setting" (34 CFR §361.5(c)(32)), the Department describes integration occurring at the "work unit" level. This language is also not found in the WIOA statute. Defining integration as occurring at the "work unit" level is job limiting and would be impossible to apply to the general workforce given that people with disabilities have

every right to their privacy. The "work unit" language specifically targets people who work for non-profit providers of employment services to people with disabilities. This language treats people with disabilities differently from the workforce at large and the non-profit service provider differently than any other employer. The sub definition of the "work unit" should be eliminated from the regulations.

The Department of Education and the Rehabilitation Services Administration (RSA) did not stop with the narrow interpretation of competitive integrated employment and the definition of the "work unit;" they added a presumption that jobs falling under programs intended to employ people with disabilities would not qualify as an employment outcome under the law. RSA incorporated this message into FAQs that the RSA posted on January 18, 2017. Subsequently, State VR offices in numerous states have stopped referring people with disabilities to good jobs that meet their needs, including jobs under the federal AbilityOne program and state set-aside programs. This is not what Congress intended. These FAQs represent a significant change of federal policy. The FAQs are a carryover from the last administration that is costing people jobs by eliminating referrals from State VR agencies. AbilityOne and state set-aside jobs often pay better, include more hours and benefits than other available jobs. The Department should eliminate the FAQs and RSA should advise the State VR offices that AbilityOne jobs and state set-aside jobs presumptively do qualify as competitive integrated employment.

In addition, young adults with disabilities who want to work should be permitted to work whenever possible. Section 511 of WIOA is being interpreted as to prevent people with disabilities who are under the age of 25 from working under 14(c) certificates even when there is no job for them elsewhere. This must change. It does not benefit a person who wants to work to be placed in a day program or left at home. We ask that the Department clarify to state VR offices that the focus should be on helping young adults under the age of 25 to become attached to the workforce, and to eliminate any guidance suggesting otherwise.

The narrow interpretations of CIE and integrated settings have ultimately diminished work opportunities for people with disabilities. The Department should focus on expanding employment choice for people with disabilities, not limiting it. People with disabilities want and deserve a full array of options in employment. A definition that limits their menu of choices will not lead to further integration, but rather will reduce opportunities and cost people with disabilities jobs.

Thank you very much for the opportunity to comment on existing rules, regulations and policy that are detrimental to employment creation and job sustainment activities.

Sincerely yours,

Floyd Nesse
Vice President