



**AUTISM SPEAKS®**

Hilary Malawer  
Assistant General Counsel, Division of Regulatory Service  
U.S. Department of Education  
400 Maryland Ave. SW, Room 6E231  
Washington, D.C., 20202

September 19, 2017

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov).  
Re: Docket ID: ED-2017-OS-0074; 82 FR 28431*

Dear Ms. Malawer,

Autism Speaks is the nation's leading autism awareness, science, and advocacy organization. We are dedicated to promoting solutions, across the spectrum and throughout the life span, for the needs of individuals with autism and their families. We do this through advocacy and support, increasing understanding and acceptance, and advancing informative research.

We are writing to provide stakeholder input and recommendations related to the Department of Education's request for comments responding to Executive Order 13777, "Enforcing the Regulatory Reform Agenda." We are eager to see improved outcomes for individuals with autism spectrum disorder (ASD) resulting from your efforts to modify education regulations that affect our nation's students. In addition, as you receive comments from individuals and groups on this topic, we are eager to continue conversations with the Department to ensure that people with ASD receive the educational supports they need to achieve the best outcomes. Based on the Regulatory Reform Task Force Progress Report published in May of this year, we offer recommendations on three policy areas identified by the Department:

Early Intervention Program for Infants and Toddlers with Disabilities (34 CFR Part 303)

Research has shown that early identification of autism indicators and delivery of evidence-based interventions can help individuals achieve better outcomes than their counterparts who do not receive these benefits. Part C of the Individuals with Disabilities Education Act (IDEA) provides access to early intervention for thousands of children with autism spectrum disorder. We recommend that the Department take no action to modify existing regulations under IDEA Part C.

State Vocational Rehabilitation Services Program (34 CFR Part 361)

Vocational rehabilitation (VR) programs are not serving the autism community well, and programs need to better accommodate the unique needs of people with autism. Program performance data show that VR services are not adequately serving people with autism, both in number and in job placement: only 3% of VR applicants found eligible to receive services had an autism diagnosis, and only 40% of those individuals had a job for 90 days after the their VR case was closed (see [National Autism Indicators Report 2016: Vocational Rehabilitation](#)). Furthermore, the median national hourly wage gap between people with autism and all hourly employees is nearly \$9 per hour. While there are some common characteristics associated

with autism – social skill deficits, repetitive behaviors, communication difficulties – no two people with autism are the same, so effective service delivery requires program flexibility, highly-individualized supports, and better understanding and awareness about the needs of individuals with autism. The existing VR systems are not set up to provide this kind of nuanced support. We recommend that the Department develop and disseminate best practices on how to help people with autism achieve better employment outcomes and provide this additional guidance to state VR program officials.

#### Limitations on the Subminimum Wage (34 CFR Part 397)

Autism Speaks supports competitive integrated employment whenever possible and the final language at 34 CFR Part 397. The Department should take further action to ensure that no negative impacts are felt by VR service recipients with autism. We recommend that the Department study how states have implemented this requirement in order to determine the aggregate effects on services for individuals with significant disabilities, including autism.

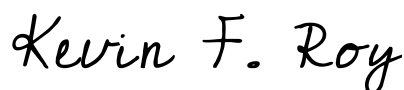
A 14(c) designation under the Fair Labor Standards Act (FLSA) can provide for the employment of people with disabilities at wages lower than the federal minimum wage. One goal of the Workforce Innovation Opportunity Act (WIOA), specifically section 511 (29 U.S.C. §794g) regarding vocational rehabilitation policies, is to limit and disincentivize such employment while at the same time promoting competitive integrated employment for people with disabilities. However, states were only required to be fully compliant with this provision recently, so we may not yet know the full impact of the regulation in its current form.

In some states, capacity is significantly lacking within the VR system to serve severely disabled individuals in integrated settings, and the only providers willing or able to do so are 14(c) holders. The unintended result of this rule should not force VR to turn away individuals with autism who have significant challenges due to a lack of providers who are able to meet their needs. At the same time, the evidence shows that individuals with autism – including those who are severely disabled – can be successfully supported in integrated work settings, so long as appropriate supports are provided at a level sufficient to meet their needs.

Autism Speaks does not recommend that the Department modify the final regulation. Instead, we strongly recommend that the Department collect and analyze data from states regarding the number, type and availability of community rehabilitation providers that are serving significantly disabled VR users with autism and other developmental disabilities.

We at Autism Speaks are grateful for the opportunity to provide input to the Department of Education. We are eager to work with you to promote positive outcomes the autism community. For more information, please contact Bartholomew Devon, Manager, Public Policy at [Bartholomew.Devon@AutismSpeaks.org](mailto:Bartholomew.Devon@AutismSpeaks.org) or 202.955.3111 x58688.

Kind Regards,



Kevin F. Roy  
Executive Vice President, Advocacy  
Autism Speaks