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September 20, 2017

[Via Regulations.Gov](#)

Ms. 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: Regulation ID: ED-2015-OSERS-0001
Date Posted: Aug 19, 2016
RIN: 1820-AB70
CFR: 34 CFR Parts 361, 363, and 397
Federal Register Number: 2016-15980
Sub-regulatory Guidance: Integrated Location Criteria of the Definition of “Competitive Integrated Employment” FAQs posted January 18, 2017

Dear Ms. Malawar:

Thank you for the opportunity to provide comments in response to the Department of Education’s June 22, 2017 notice seeking public input on regulations and related rules that are outdated, unnecessary, expensive, overly burdensome, create serious inconsistencies, or eliminate jobs and/or inhibit job creation. I am the President & CEO of Peckham, Inc., headquartered in Lansing, MI. Peckham, a nonprofit community rehabilitation organization, is a unique business and human services agency. We use a social enterprise model to provide employment and training for people with significant disabilities or other barriers to employment. Peckham leverages the federal AbilityOne Program to access quality employment opportunities so that people with disabilities can become gainfully employed.

I am submitting comments today regarding regulation and guidance, promulgated by the U.S. Department of Education during the last Administration, which is significantly negatively affecting job opportunities for people with disabilities. The regulation and guidance unnecessarily restricts quality employment options for people with disabilities and is inconsistent with the intent of Congress.

The Workforce Innovation and Opportunity Act (WIOA), signed into law in 2014, was a bipartisan success intended to broadly support U.S. businesses and workers using workforce solutions developed through the coordinated efforts of federal workforce development and related programs. Title IV of

WIOA is intended to increase opportunities for individuals with disabilities to obtain competitive integrated employment.

Subsequent to the passage of WIOA, the U.S. Department of Education's Rehabilitation Services Administration (RSA) began promulgating guidance concerning the implementation of Title IV of WIOA. This guidance includes what amounts to a regulatory "re-definition" of competitive integrated employment that is neither a part of the WIOA law nor does it reflect the intent of Congress. Rather than increasing competitive integrated employment, this guidance eliminates competitive integrated employment options based on an arbitrary and inaccurate interpretation of what work settings are "typically found in the community."

This ideological agenda is causing real and quantifiable harm to states and their citizens with disabilities. In effect, RSA's wrongful interpretation of sections of WIOA is a "jobs killer" wiping out thousands of job opportunities for a population that is already underemployed. The guidance eliminates options and choice for individuals with disabilities.

The re-definition of competitive integrated employment targets the AbilityOne Program and participating non-profit agencies across the country as ineligible to be considered competitive integrated employment settings simply because they affirmatively hire persons with disabilities. Moreover, the guidance being promulgated by RSA strips persons with significant disabilities, who either express an interest in becoming employed or are receiving supports to maintain employment, of state vocational rehabilitation (VR) support. It is bad policy when one federal agency attempts to eliminate the benefits of another federal agency by issuing regulatory and sub-regulatory directives that require the cessation of collaboration and cooperation between federal programs.

The AbilityOne Program is the largest source of employment in the United States for individuals who are blind or have significant disabilities. The AbilityOne program uses the purchasing power of the Federal Government to buy products and services from participating community-based nonprofit agencies (NPA) nationwide, dedicated to training and employing individuals with disabilities. The employment settings that these individuals work within are among the most diverse and inclusive settings in the country and include installations within all branches of the military and virtually every department and agency of the Federal government. AbilityOne employment includes full prevailing wages and benefits and significant career advancement opportunities.

The previous Administration claimed that work settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities do not constitute integrated settings because these settings are not typically found in the competitive labor market. The previous Administration also claims that the funding of positions through AbilityOne contracts is a reason that a business would be considered "not typically found in the community." We strongly believe this is an overreach by the previous Administration, and that neither WIOA nor Congressional intent, either explicitly or implicitly state that community rehabilitation programs or AbilityOne contracts are universally non-integrated settings and are to be excluded from consideration as competitive integrated employment. Nor do we agree with the prior Administration's claim that this has been the Department's long-standing interpretation or practice. In Michigan, state vocational rehabilitation counselors are caught between advancing their participants' vocational and economic interests or following misguided sub-regulatory guidance.

The chief purpose of the regulations is to ensure that individuals with disabilities participating in the VR program are able to pursue the same type of outcomes that are available to the general public. No relevant legislation, either WIOA or its predecessor, makes any attempt to define the work setting by how the employer is organized or why an employer chose to organize in a particular way. At no time did the definition of “integrated setting” include the employer intent, for- or non-profit status, or percentage of employee type. Using this logic, it would also stand to reason that an 8(a) small business firm (one that is owned by a socially and economically disadvantaged small business owner and certified by the Small Business Association) would also not be considered a ‘typical work setting’ since there are only 7,500 firms certified and the program is organized to specifically promote a social and economic need. Similarly, an Employee Stock Ownership Plan (ESOP) would also not be considered ‘typical’ as it presents a fairly rare employment setting in the US, one where the employees own the company.

A setting typically found in the community is one that includes the following:

- Where there is diversity in worker characteristics, including race, ethnicity, gender, and disability status
- Where earnings are meaningful and constitute a livelihood
- Where people come to earn a living, not primarily for socialization
- Where there is actual and realized opportunity for upward mobility
- Where there are multiple job titles and job levels
- Where people perform the work at acceptable norms with or without accommodations
- Where the employer pays unemployment insurance and workers compensation on each employee
- Where employees are terminated for inability to perform the work

The previous Administration claims that the elimination of community rehabilitation programs and AbilityOne contract employment is consistent with long-standing Department policy. However, this has not been the practice for the past seventeen years, nor has it been the guidance issued by the Department on this very subject. In fact, prior Departmental guidance was created for the express purpose of helping state VR agencies to determine if job positions at community rehabilitation programs, including positions funded through the AbilityOne program, meet the definition of “integrated setting.” This guidance would not have existed if the Department had not allowed that community rehabilitation programs and AbilityOne jobs could be considered integrated settings. In addition, it is clear that over the past seventeen years, state VR agencies across the country have reviewed job positions at community rehabilitation programs and on AbilityOne contracts and found that they met the criteria for integrated setting and therefore count as employment outcomes.


Today, in at least 19 states including Michigan, state VR counselors have stopped referring people with disabilities to AbilityOne jobs, citing this restrictive guidance from RSA. Jobs are going unfilled and job creation for persons with the most barrier to employment is slowing dramatically as a result. RSA’s actions are directly causing people with disabilities to lose access to high wage, full benefit, career-enhancing competitive employment opportunities, leaving them with lower wage, dead end options for employment. RSA’s actions are denying access to training opportunities for people with disabilities that would allow them to access high wage, full benefit jobs with long term career potential.

We appreciate this Administration’s efforts to identify and remove job-stifling regulations. The balance of the regulations contained in ED-2015-OSERS-001-1167 are positive and promote growth in job opportunities that meet the needs of U.S. businesses and workers across the country. However, this specific regulatory overreach with its singular re-definition of competitive integrated employment

causes serious harm to job seekers with significant disabilities and job creating organizations across the country. We hope you will rescind RSA's improper re-definition of competitive integrated employment and require strong direction to the field restoring previous definition, guidance and practice.

Thank you for the opportunity to share our concerns. Please feel free to contact me directly if you would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Mitchell Tomlinson". The signature is written in a cursive, flowing style.

Mitchell Tomlinson
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