



Turning Disabilities into Capabilities Through Employment

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September 14, 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:

The State Use Programs Association, commonly known as SUPRA, is the principal trade association representing state Central Non Profit Agencies (CNAs) throughout the nation with over 2,200 Community Rehabilitation Programs collaborating as affiliates. 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), SUPRA 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 Javits-Wagner-O'Day/Ability One and state use contracting opportunities. SUPRA 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 and was interpreted by the Department of Education to exclude the Community Rehabilitation Programs that exist throughout the country, where well over 100,000 people are employed today. 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. 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.

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,

Vince

Vincent M. Loose, President / Chair
SUPRA, Board of Directors