

## **Comments on WIOA Regs**

**The Docket ID is ED-2017-OS-0074-0001.**

Comments on: Regulation ID: ED-2015-OSERS-001-1167 Date Posted: Aug 19, 2016 RIN:1820-AB70

**CFR:**34 CFR Parts 361, 363, and 397 **Federal Register Number:** 2016-15980

**Submitted by Henrico Area Mental Health and Developmental Services.**

### **Youth:**

Young adults with disabilities who want to work also should be permitted to work whenever possible. Section 511 of WIOA is being interpreted through some State VR agencies 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.

Why is this important? These regulations impact PEOPLE. They are not just impacting those who support the individuals, but the individuals themselves.

### **Examples:**

Young individuals with developmental disabilities must now hook up with the Department of Rehabilitation Services and cannot work in a facility with a 14c certificate while exploring their work options. This has limited access to programs that help them maintain their skills, teach them social and soft skills that can assist with their job search and most importantly, impact families who must now provide daily care since the individual cannot attend any other work program while exploring options for community employment.

It is our experience that individuals with developmental disabilities come from high school with minimal soft skills and maturity needed to work in the community. By attending the facility based program and earning wages, they are maintaining skills they have and have an opportunity to mature so they can be successful when placed in a business. Now, those same individuals are being steered into non-work programs to provide relief to the families or are sitting at home while they go through the Rehabilitation process, which often takes months from referral to job placement. During

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this time, they are losing the skills they have gained, making it more difficult to find them employment.

Individuals who are working in a setting with others who have disabilities, even if they are earning more than minimum wage, are being subjected to scrutiny as to how many others in their section have disabilities. First, this should not be something that everyone knows. And secondly, should it matter if the individual is working for the company? I have seen some instances where there were questions as to who worked what shift, something neither the individual nor the provider of service have any control over. For example, two individuals work at a trophy shop and on any given day, may work alone or with one other person. They are on the payroll of the business and have gone through the same orientation, training and have the same benefits as others in the business. Yet, it is being questioned if they are integrated due to the small number of employees in the department in which they work. The original definition in the law did not provide these caveats.

### **Section 511 of the regulations:**

This section is placing an undue burden on the individual and the provider of services to meet the requirements of training about integrated employment. Many individuals who earn subminimum wages under Section 14c of the Fair Labor Standards Act have been in the facility based employment for years. Others have returned to this employment after successfully working in the community setting but have retired. Working in the subminimum wage job, allows them to work, earn some money and to retain the value they receive from having done a good job. Paydays are one of our most exciting days.

The requirements in Section 511 require the State entity (generally State VR agencies) to provide training on community employment. The individual must sit through this training and sign a form as to whether they want to meet with the State VR agency. However, there is no requirement that VR follow up but there is a requirement imposed on the provider to ensure the person receives this training or they cannot continue to pay them wages. Each individual must receive this training annually. For those under

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25, no matter how long they have been employed by the ESO, they must have the training every 6 months. Many individuals have expressed frustration that they have had the training and don't want to do it again. However, their lack of willingness does not change the onus on the ESO to document this training. It is a real Catch-22 that will result in individuals losing their ability to participate in paid work and will result in either sitting at home or being in a non-paid day activity.

These requirements should be eliminated and only what is in the WIOA Act should be implemented.