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Ben Gibson
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Rebecca Fishman Lipsey
Michael Olenick

Docket ID: ED-2017-OS-0074

Re: Comments and Recommendations for US Department of Education Regulatory Reform Task Force

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202

**Florida Division of Vocational Rehabilitation
Response to Request for Comment on Regulations**

The Florida Division of Vocational Rehabilitation (VR) welcomes the opportunity to provide input on the United States Department of Education (USDOE) regulations that may be appropriate for repeal, replacement, or modification in accordance with Executive Order 13777. Florida VR has identified regulations that do not further our mission to help people with disabilities find and maintain employment, and enhance their independence.

1. Allow Annual Reporting rather than Quarterly Reporting

ISSUE: Quarterly reporting requirements place an unnecessary administrative burden on the VR agencies. The costs of this increased frequency of reporting exceed any benefits and take counselor time and other resources that could be better spent on direct case services to assist individuals with significant disabilities to obtain or maintain competitive integrated employment and better serve the needs of business. Quarterly reporting also places a tremendous burden VR staff who are responsible for data management, analysis, and validation. Florida VR is concerned that the short reporting cycle will lead to a continuous process of generating and reviewing the data as soon as the previous quarter's report is submitted. We are also concerned that the Rehabilitation Services Administration (RSA) won't have the time or opportunity to review or react to the enormous influx of reports, rendering the exercise futile. In the past, states reported on an annual basis. Section 101(a)(10)(b) of the

ALLISON FLANAGAN

Director, Division of Vocational Rehabilitation

2nd Floor • 4070 Esplanade Way • Tallahassee, FL 32399-7016
Toll Free: 1-800-451-4327 • 850-245-3399 • FAX: 850-245-3392 • www.rehabworks.org
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Rehabilitation Act, as amended, provides that the Commissioner shall require annual reporting. There is no provision requiring quarterly reporting. Reporting quarterly increases the reporting workload, incrementally diverting staff and resources from serving consumers in need of services, without providing any commensurate benefit.

RECOMMENDATION:

- a. Florida VR recommends that RSA PD-16-04 be modified to replace the requirement for quarterly reporting and returned to an annual reporting basis. The quarterly reporting requirement is ineffective, imposes costs that exceed benefits, and is inconsistent with regulatory reform initiatives to reduce the regulatory burden. This data collection requirement does not assist Florida VR to achieve its mission.

2. “Student with a Disability” Age Determination in States with Separate VR Agencies

ISSUE: Technical assistance received from RSA staff confirms that in States with two vocational rehabilitation VR agencies (a general vocational rehabilitation agency and an agency serving people who are blind and visually impaired), both agencies must agree on the age at which Pre-Employment Transition Services (Pre-ETS) will become available to students with disabilities. The requirement that two separate designated state units (DSUs) within one State must agree on a specified age for the commencement of services is based on the language in the regulation referring to the “State” rather than the “state unit.” However, the definition of “State” in 34 C.F.R. § 361.5(c)(48) “means any of the 50 States...” and does not specify that multiple DSUs must make the same choice.

The current RSA interpretation has serious, unintended consequences. General agencies serve very different demographic populations than agencies serving blind and visually impaired individuals. The Florida Division of Blind Services (DBS) is a “cradle-to-grave” program that provides services to children with disabilities throughout primary and secondary school. Accordingly, it is natural to expect that they are able to provide Pre-ETS at age 14. However, Florida VR does not have the capacity to serve 14 year olds, and has chosen to begin Pre-ETS services at 15. Proportionally, the number of school-age blind students is much smaller than the number of students who might receive services from a general VR agency. Forcing a single choice is detrimental to both agencies and does not acknowledge programmatic and resource differences.

RECOMMENDATION:

- a. Modify RSA policy guidance and clarify regulations to allow each DSU to set the minimum age at which Pre-ETS will become available to students with disabilities.

3. Supported Employment

ISSUE: Previous technical assistance received from the Rehabilitation Services Administration (RSA) prior to the current regulations indicated that Supported Employment services could begin immediately upon determination that supported employment would be the employment goal on an IPE including job development and customized employment services. Following WIOA, the slightly amended definition of supported employment services paired with new RSA guidance changes when services become eligible to be charged to the Supported Employment grant. Now only services that occur after an individual with a significant disability obtains employment, such as job coaching.

Guidance offered in training conflicts with the language in 34 C.F.R. § 361.5(c)(54), and limits the agency's ability to expend funds from the Supported Employment grant, especially for youth. Restoring VR agencies' ability to expend Supported Employment grant funds prior to placement will allow us to spend the funds and support individuals in achieving competitive integrated employment.

RECOMMENDATION:

- a. Amend the definition of supported employment services to include services an individual may need to find employment, including customized employment services.
- b. RSA should amend its recently issued guidance to allow States to include services that were originally allowable under supported employment.

4. Authorize Reasonable Accommodations for Equal Access to Pre-ETS

ISSUE: WIOA identifies five mandatory and nine authorized Pre-ETS. In the preamble to the Final Federal Rules (81 FR 55685, 55694, 55695), RSA created an unnecessary distinction between Pre-ETS and individualized transition services. This has the result of requiring a student with a disability who needs an individualized tool, service, or accommodation to access Pre-ETS, to go through the lengthier process of applying for vocational rehabilitation services. This distinction has limited equal access to Pre-ETS for students with disabilities who require individualized tools, services, or accommodations such as assistive technology and transportation.

This distinction between Pre-ETS and individualized transition services, created in the preamble to the final federal rules, is not required by the statutory. This distinction is ineffective in furthering the goals of Pre-ETS and imposes costs without any apparent benefit.

RECOMMENDATION:

- a. Delete the guidance in the preamble that creates the unnecessary distinction.
- b. Modify 34 CFR 361.48(a) to provide: "Pre-Employment transition services include any reasonable, individualized service listed in section 361.48 required for a student with a disability to receive any of the pre-employment transition services listed in 361.48(a)."

5. VR Agency Responsibilities for Career Counseling and Information and Referral Services (CCIR) under Section 511

ISSUE: CCIR services must be provided to individuals who are “known” to the VR agency annually. The regulations provide requirements that exceed those in WIOA related to the definition of “known,” and the timing of annual trainings. These requirements, and RSA’s interpretation of them, place an undue administrative burden on VR to maintain information about individuals who are working in subminimum wage employment. The individuals who receive CCIR training are generally made known to VR by the 14(c) certificate holder in order to secure the CCIR services. Once the CCIR services are delivered, it is the employer, not the VR agency, who has the most current, accurate information about the work status of the employee who remains in subminimum wage employment. Holding the VR agency responsible for maintaining the information and initiating the training on an annual basis shifts responsibility for compliance with CCIR requirements from the employer to VR. VR is to provide the CCIR services and serve individuals who apply for VR services as a result.

As time goes on, the number of individuals who States are perpetually tracking will continue to accumulate. VR agencies have had to design new tracking systems and dedicate resources specifically to this new process, which will require more and more resources over time.

RECOMMENDATION:

- a. The regulations and technical assistance provided by RSA should put responsibility for making the individuals currently employed in subminimum wage employment “known” to VR on an annual basis on the subminimum wage employer. It should remove responsibility of VR for tracking subminimum wage employees from year-to-year.

6. Do Not Require Prior Approval of Equipment Purchases for Consumers and Vendors

ISSUE: The Office of Management and Budget (OMB) “Super Circular” (2 CFR Part 200) issued in 2014, resulted in the application of pre-approval requirements to vocational rehabilitation (VR) agencies, which have not been subject to requirements of this nature for at least a decade. Applying the Super Circular to VR agencies conflicts with other legal requirements and is unnecessarily burdensome. There is also a conflict of technical assistance information about the application of this provision to services and equipment provided to consumers. Florida VR was advised that this requirement does not apply to such equipment; however, that is not a consistent understanding nationally.

RECOMMENDATION:

- a. Florida VR recommends that regulation be modified to explicitly state that VR agencies (including State Licensing Agencies, under the Randolph-Sheppard Act), in making consumer purchases, need not seek pre-approval in accordance with 2 CFR 200.439, or 2 CFR 200.313. Consumers and vendors are not sub-recipients (2 CFR 200.93). Further, WIOA specifies that a range of goods are considered

services, and so should not be accounted for as equipment or capital expenditures (see 29 USC 723(a)).

- b. Florida VR recommends that United States Department of Education (USDOE) modify its regulation to explicitly state, as well as coordinate with OMB to modify 2 CFR 200.313 and 2 CFR 200.439 to include a provision that states the following:
 - “Pre-approval requirements shall not apply when the equipment or capital expenditures are purchased for the benefit of recipients of vocational rehabilitation services under the Rehabilitation Act and licensed blind vendors under the Randolph-Sheppard Act.”
- c. In either case, Florida VR recommends that RSA provide clear instruction on the application of these provisions, including confirmation that the prior approval requirements do not apply to purchases for consumers.

7. Maintenance of Effort Waiver

ISSUE: Although 34 C.F.R. §361.62(d) on Maintenance of effort requirements permits States waivers or modifications to maintenance of effort requirements because of “exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn,” this is insufficient to account for many one-time expenses States incur to implement significant program changes, improvements, or invest in infrastructure. While the intent of the policy may be to encourage States to establish consistent budgeting and spending practices, unpredictable and ever-changing political climates prevent consistent investment in VR programs as legislative priorities shift from year to year. VR agencies are held accountable for State legislature actions. For example, if a VR agency is operating under order of selection because it cannot serve all eligible individuals, that agency is punished if it is able to secure temporary funding to open its waiting list. Currently, many agencies are seeking one-time funding increases to implement programmatic changes necessary to comply with regulatory changes following WIOA. However, if agencies are unable to secure a permanent increase from their legislature, they face a future reduction in federal funding that negates any temporary relief they may receive. Without reasonable flexibility, States are discouraged from making such investments out of fear that they will lose federal funding in the future.

RECOMMENDATION:

- a. RSA should amend 34 C.F.R. § 361.62(d) to clearly permit waivers or modifications for States that make significant one-time investments to improve services or comply with regulatory changes.