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May 11, 2020

Via Submission through Regulations.Gov

Mr. Douglas Zhu
Department of Education
400 Maryland Avenue, S.W.
Washington DC 20202

Re: Docket ID: ED-2020-OSERS-0011-0001 Proposed Priorities, Requirements, and Definitions-Rehabilitation Training: Vocational Rehabilitation Technical Assistance Center-Quality Management; and Vocational Rehabilitation Technical Assistance Center-Quality Employment

Dear Mr. Zhu:

ACCSES submits this comment on behalf of itself and the more than 1,200 providers of services to people with disabilities that ACCSES represents. ACCSES member agencies and state associations serve over three million people with disabilities. Their efforts expand opportunities for people with disabilities to live, work, and thrive where and with whom they want – just like people without disabilities. Yet, for the past four years, since the Workforce Innovation and Opportunity Act (WIOA) regulations were released, people with disabilities, including federal, state, and local contractors have been treated differently. The time is now for the Department of Education, the Office of Special Education and Rehabilitative Services (OSERS), and the Rehabilitation Services Administration (RSA) to fix this disparity (collectively, "the Department"). Unfortunately, this request for public comment underscores our concern that the problem will be prolonged rather than corrected. That would be the wrong result as we are all working together to expand opportunities for people with disabilities.

Let us pause for a moment and look at where we are. On Friday, May 8, 2020, the Bureau of Labor Statistics issued its latest jobs report and it is discouraging to say the least.¹ Unemployment for working-age people with disabilities, which already was almost twice that of unemployment for the general population, is now at 18.9%. We have seen a loss of 950,000 jobs held by people with disabilities just between March and April. The May jobs report is expected to be worse.

Many of the jobs that working-age adults with disabilities have held onto during this pandemic are jobs deemed essential by federal, state, and local governments. That alone should convince the Department that these jobs are valid opportunities that deserve respect. Instead, this request

¹ Bureau of Labor Statistics, Employment Situation Summary, May 8, 2020, available at <https://www.bls.gov/news.release/empsit.nr0.htm>.

for public comment largely ignores these essential jobs and the community rehabilitation programs that support them.

The WIOA regulations were published in the Federal Register in August 2016. The preamble to Part IV (*State Vocational Rehabilitation Services Program*, et. al) of the regulations – not the regulations themselves – contains language in a discussion of competitive integrated employment that *unilaterally disqualifies jobs intended for people with disabilities* from the definition:

The criterion does not exclude from competitive integrated employment any innovative or unique business models that otherwise satisfy the definition's criteria. Instead, *the Secretary interprets the criterion to be more narrowly focused on the purpose for which the business is formed. . . . [B]usinesses established by community rehabilitation programs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy this criterion, and, therefore, are not considered integrated settings, because these settings are not within the competitive labor market. . . . The factors that generally would result in a business being considered "not typically found in the community" include (1) the funding of positions through Javits-Wagner-O'Day Act (JWOD) contracts; (2) allowances under the FLSA for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the [state agency] to take these factors into account when determining if a position in a particular work location is an integrated setting.*²

The position taken in the preamble is directly contrary to federal policy and to regulations issued 16 years ago specifically calling for a "case-by-case" decision of whether a job is "integrated," and noting that "*many jobs secured under JWOD service contracts would meet these criteria.*"³ Simply put, there never has been a federal policy barring State VR offices from referring people with disabilities to jobs based on this entirely false construction of the law. This Administration did not create this specious criterion and should not stick by it.

Despite it being job limiting, this is the position the RSA took with respect to State VR offices in fall 2016. On January 18, 2017, RSA memorialized this guidance in the form of FAQs that were posted on the RSA website.⁴

² 81 FR 161 at 55463 (Aug. 19, 2016) (emphasis added). These jobs frequently fall under the federally mandated AbilityOne program (under JWOD) and state set aside programs.

³ See 66 FR 4419 (Jan. 17, 2001) (emphasis added).

⁴ RSA FAQs at <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html>.

It is in the Department's best interest to eliminate this guidance. As noted, in the Federal Register notice leading to this public comment, "The VR program's employment rate decreased from 49.3 percent in PY 2017 to 47.6 percent in PY 2018. In the same period, the number of participants exiting with employment outcomes fell from 152,425 to 142,722. Relatedly, the number of participants who exited the VR program for any reason decreased from 311,748 to 300,794 in the same timeframe."⁵ Think about that: since WIOA, VR placements are down. The Department has an immediate fix at hand that would put people with disabilities back to work. Is that not what we all want to see happen?

We therefore make three asks of the Department through this public comment:

1. Eliminate RSA's job killing guidance once and for all;
2. Provide training to State VR offices on how to conduct a case-by-case review of job sites that expands the community to include jobs at military bases, courthouses, airports, government buildings, and myriad other locations where jobs exist right now; and
3. Recognize the important role community rehabilitation programs play in supporting individuals with disabilities as part of any training program.

On a lighter note, we want to close with an acknowledgement that one of the helpful things about WINTAC is that it has an easy-to-remember acronym. We encourage the Department to do the same when naming any future technical support centers.

Thank you for the opportunity to share our concerns.

Sincerely yours,



Terry R. Farmer
President & Chief Executive Officer



Kate McSweeney
Vice President of Government Affairs & General Counsel

⁵ 85 FR 69 at 199910 (Apr. 9, 2020).