



April 8, 2021

Ms. Carol Dobak
U.S. Department of Education
400 Maryland Ave SW, Room 5153
Potomac Center Plaza,
Washington DC 20202

Via electronic submission at <http://www.regulations.gov>

Re: Docket ID: ED-2021-OSERS-04

Dear Ms. Dobak:

On behalf of the Association for People Supporting Employment First (APSE), we submit these comments in response to the proposed guidance that clarifies the Department of Education's policy on the criterion for an integrated employment location in the definition of "competitive integrated employment," for purposes of the State Vocational Rehabilitation (VR) Services program.

APSE is the only national, non-profit membership organization dedicated to Employment First. We want people with disabilities to enjoy greater financial independence, self-actualization, and the ability to contribute to the economy through employment. To further project goals, APSE will facilitate the opportunity for you to interact with APSE's 3,300+ members across the country who provide personalized transition planning, experiential learning opportunities, and employment services to transition age youth.

A foundational strength of the Workforce Innovation and Opportunity Act (WIOA) is its clear emphasis on competitive integrated employment (CIE) as the intended and preferred outcome of VR services. We appreciate RSA's leadership and commitment to addressing persisting barriers to the achievement of CIE, including being responsive to concerns raised regarding the clarity of guidance offered in the 2017 FAQs. In reviewing this guidance, we applaud the general theme and specificity regarding enforcement of this requirement. In particular:

- The emphasis that "competitive integrated employment" (CIE) is not a sudden shift in policy, but part of the evolution of long-standing VR program regulations and policy stretching back over 20 years. In fact, it represents a natural progression in the evolution that has occurred toward full inclusion of people with disabilities into employment and society as part of the implementation of the Americans with Disabilities Act (ADA), U.S. Supreme Court's 1999 Olmstead decision, etc.

- That determination of whether a setting meets the criterion for CIE is to be made on a case-by-case basis. We particularly applaud the consistent use of the language regarding the standard for “Typically Found in the Community” (Q8, Q9, and Q10) and specific criteria under Q18 for determining whether a position meets the criteria for CIE.

We feel the overall guidance is strong. However, we offer the following comments for your consideration of potential modifications.

- Q3) Given the overall emphasis within the VR program of CIE as the preferred outcome, and the overall national context that emphasizes increasing employment for people with disabilities in the mainstream workforce as a major priority (e.g., the Employment First movement and the declining use, and outright prohibition by some states, of 14(c) certificates and subminimum wage), we submit that the neutral nature of the guidance regarding individual choice from an array of employment options, with competitive integrated employment simply as one of those options, is problematic. We prefer to see language that clearly states that CIE is the preferred outcome of VR services, and the underlying rationale for that preferred outcome (e.g., higher wages, more economic independence, stronger connections with the community, overall national movement towards full inclusion of people with disabilities in employment etc.). We do not believe that a statement of this preference is mutually exclusive of individual choice to pursue other non-work options.
- Q7) The response offers relatively minimal and generic requirements for the vocational rehabilitation (VR) counselor to meet the criteria of having “afforded choice.” It also is problematic that it is noted, throughout the document, that the person seeking services would be “ineligible” if they expressed an initial interest to pursue subminimum wage employment. Much of the benefit received from VR services is the exploration of one’s strengths, resources, priorities, concerns, abilities, capabilities, interest and informed choice. By determining someone ineligible prior to that process, VR is effectively denying the individual with a disability an opportunity to benefit from the expertise and assistance afforded from a VR counselor. It is our opinion that this practice is in direct opposition to the goals of the VR system. We recommend the inclusion of the following be explicitly stated as a requirement for VR counselors to address prior to deeming an applicant ineligible for services:
- Individualized benefits counseling specific to the person’s unique circumstances
 - Peer to peer consultation from others who are working competitively
 - Identification of the reason(s) the individual has elected not to pursue CIE and exploration of the education and/or supports available that address barriers identified (if and when applicable)

- Q9) The example provided by RSA in question nine may create unintended consequences by making a reference to a mandated direct labor ratio requirement as a likely disqualifier when assessing if a job position is competitive integrated employment. A VR agency may assume that because the position is required by law to comply with a direct labor-hour ratio that particular position is not competitive integrated employment when it meets other factors under the criteria for an integrated employment location. RSA should clarify that when assessing a position, the direct labor ratio requirement should not be the only deciding factor when making a determination whether the position meets the definition of CIE. We recommend that the FAQ further clarify that it is the responsibility of the VR counselor to examine each available employment opportunity, regardless of whether an employer participates in AbilityOne or state use programs.
- Q15) We appreciate the discussion regarding whether group employment settings meet the criteria for CIE, and specificity of the criteria that have to be met. We recommend changing the first sentence: “It depends” to “In some cases, such settings could potentially meet the definition of competitive employment, but they must meet all the required criteria.” We also request that a bullet be added under Q15, noting specifically that the business cannot have been created for the express purpose of employing people with disabilities. Currently this is only implied by reference to other portions of the guidance and regulations.
- Q20) We believe that one of the overall shortcomings of the Rehabilitation Act is a lack of a clear definition of informed choice. We suggest adding language that both defines informed choice and specifies steps to be taken to ensure informed choice has occurred. We also feel there is a need to make significant revisions to the discussion in Q20 regarding informed choice. As we noted earlier, we recommend changing the neutrality of the language regarding the “full range” of employment opportunities, to note that CIE is the preferred outcome of VR services. We also suggest that this particular sentence should be modified: “Additionally, individuals may find it helpful when exercising informed choice to know that it is permissible under the VR program to participate in both integrated and non-integrated training and work experiences.” We suggest changing it to “Additionally, individuals may find it helpful when exercising informed choice to know that it is permissible under the VR program to participate in both integrated and non-integrated training and work experiences, although the preference is for integrated training and work experiences, and within such discussions competitive integrated employment as the expected outcome of VR services should be noted.”



In closing, we offer the following as additional consideration. We ask RSA to place specific intent toward addressing the significant disparities in employment and educational outcomes among Black and Indigenous People of Color (BIPOC) people with disabilities. (<https://disabilitycompendium.org/compendium/2020-annual-disability-statistics-compendium?page=19>). RSA must push for better data collection and ensure that state VR systems are actively working to address cultural sensitivity, competency, and equity in their work and provision of services.

Thank you for the opportunity to provide feedback on this guidance. APSE looks forward to continued partnership with RSA as we work together to address the labor participation gap and promote competitive integrated employment opportunities for people with disabilities.

Sincerely,

Julie J. Christensen, MSW, PhD
Interim Executive Director, Director of Policy & Advocacy
Association of People Supporting Employment First (APSE)