



COUNCIL OF STATE ADMINISTRATORS OF VOCATIONAL REHABILITATION

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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

The Council of State Administrators of Vocational Rehabilitation (CSAVR) is pleased to provide input in response to the request for comments as to regulations that are appropriate for repeal, replacement, or modification in accordance with Executive Order 13777. CSAVR is composed of the chief administrators of the public rehabilitation agencies serving individuals with significant disabilities in all the States, District of Columbia, and the territories. These agencies constitute the state partners in the State-Federal program of rehabilitation services provided under the Rehabilitation Act of 1973, as amended.

The Council's members supervise the rehabilitation of some 1.2 million persons with disabilities. The public vocational rehabilitation programs administered by CSAVR's members constitute the major avenue for individuals with disabilities to obtain or maintain competitive integrated employment. In addition to serving individuals with disabilities CSAVR and its members work closely with business to assist them in maintaining employees with disabilities as well as meeting their hiring needs by referring well qualified applicants.

In developing comments, CSAVR sought input from its membership as well as encouraged our members to submit their comments directly. We have identified in our recommendations the items that were most commonly cited by our membership.

Please find below CSAVR's input in response to the request for comments as to regulations that are appropriate for repeal, replacement, or modification:

1. **34 CFR 361.48(a)** Allowable expenditure under pre-employment transition services & **Overview and Discussion of Federal Regulations on Transition Services and Pre-Employment Transition Services presentation** presented by RSA at CSAVR November 2016 conference

CSAVR recommends that this regulation be modified to allow any support service a student with a disability, who is receiving pre-employment transition services (Pre-ETS), needs to access or fully benefit from the Pre-ETS be charged to the 15% set aside. The Why for this recommendation is that support services such as transportation are often necessary for many students with disabilities to have equal access to and fully benefit from Pre-ETS required and authorized activities as they move towards competitive integrated employment. The current regulation imposes an undue administrative burden on state VR agencies in terms of tracking these costs and also takes funding away from other VR customers because under the current regulation, Title I VR funds must be used to pay for these services.

Further, CSAVR recommends that the regulatory guidance provided in the abovementioned presentation be revised to reflect what 34 CFR 361.48(a)(1) requires that Pre-ETS services must be made available Statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for VR services. The Why for this recommendation is that the referenced guidance conflicts with the regulation and arbitrarily limits when necessary Pre-ETS services can be provided. The regulatory guidance noted above provides that State VR agencies that are in an active Order of Selection (OOS) can only provide needed Pre-ETS services to students with disabilities who apply for VR services and are placed in a closed priority category on the waiting list if the student began said services before applying. It was not Congressional intent that students be placed on a waiting list and not have the opportunity to receive Pre-ETS services. All students with disabilities who have applied for VR services and been placed in a closed category in an OOS should be receiving Pre-ETS services regardless of whether or not said services started before they applied.

2. **2 CFR 200.313 and 439** requiring that state Vocational Rehabilitation (VR) agencies must have prior approval from the Rehabilitation Services Administration (RSA) prior to making equipment purchases of \$5,000 or more.

CSAVR recommends that the regulations cited be modified to include language noting that the pre-approval requirements do not apply when 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. The Why for this recommendation is that these regulations add an unnecessary burden to State VR agencies and delay services to VR's customers, individuals with

disabilities, who are working to enter or return to competitive integrated employment. Further, these regulations negatively impact VR's business customer by delaying the State VR agency's ability to address the services they need to retain talented employees who are in need of VR services to continue working.

These regulatory requirements became applicable to VR in 2014, but prior to that no such approval was required at the federal level and the program functioned without problem. There are clear cost principles in place and this additional oversight is unnecessary. Any benefits that might inure from these regulations are greatly exceeded by the inhibition they create to employment opportunities for VR's customers. Finally, the requirements conflict with the assurances of service without delay required by 34 CFR 361.36(b) and the flexible procurement policies required by 34 CFR 361.52(b)(3).

3. RSA PD-16-04 Quarterly Reporting Requirement

CSAVR recommends that RSA PD-16-04 be modified to replace the requirement for quarterly reporting and returned to an annual reporting basis. The Why for this recommendation is that the data being reported is used by the Department on an annual basis to populate annual reports, so the quarterly reporting requirement places an unnecessary administrative burden on the State 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. Clearly, the current requirement is inconsistent with the intent of regulatory reform which is to reduce not add burden.

4. 34 CFR 361.155(a)(1)(iv)(A) Data sharing concerning percentage of participants who gain a recognized postsecondary credential or secondary school diploma

CSAVR recommends that subregulatory guidance be issued to state and local education agencies and State VR agencies specifically stating that the WIOA core programs including VR are education programs under FERPA's audit and evaluation exemption and that FERPA protected individual records can be shared among WIOA core programs without the express written permission of each individual. The Why for this recommendation is that the required reporting information on credential /diploma attainment is not currently available in a consolidated data base and often when VR agencies are seeking this data from schools they must provide individual releases to get the data.

The current system unnecessarily delays services and the movement of students with disabilities into competitive integrated employment. Further, tracking these individuals within one year after exit from the program is often challenging and presents costs that are exceeded by the benefits unless there is a consolidated data base as noted above. If such a database and data sharing is not possible, CSAVR recommends modifying the regulation to eliminate this reporting requirement because again the costs exceed the benefits.

5. Competitive Integrated Employment per 34 CFR 361.5(c)(9)(ii)

CSAVR supports the definition of Competitive Integrated Employment (CIE) in the Regulation cited above and recommends that it be maintained. The Why for the recommendation is that the regulatory definition cited above is consistent with Section 7(5) of the Rehabilitation Act, as amended by WIOA. More importantly individuals with disabilities need to have the opportunity to be fully integrated into all aspects of our society including employment. CSAVR also believes that the current regulation does not diverge from prior regulations, long-standing Department policy, VR agency practice, or the heightened emphasis on competitive integrated employment throughout the Rehabilitation Act, as amended by WIOA. Due to the impact of the definition of CIE on some providers of VR services and employers, CSAVR recommends that the Rehabilitation Services Administration (RSA) offer additional guidance and training for VR staff and others, on how State Agencies can maximize every employment opportunity for each VR consumer with whom they work and to assure they have all the information they need to determine what employment outcomes meet the definition of CIE.

6. Competitive Integrated Employment per 34 CFR 361.5(c)(9)(ii)

CSAVR supports the definition of Competitive Integrated Employment (CIE) in the Regulation cited above and recommends that it be maintained. The Why for the recommendation is that the regulatory definition cited above is consistent with Section 7(5) of the Rehabilitation Act, as amended by WIOA. More importantly individuals with disabilities need to have the opportunity to be fully integrated into all aspects of our society including employment.

CSAVR also believes that the current regulation does not diverge from prior regulations, long-standing Department policy, VR agency practice, or the heightened emphasis on competitive integrated employment throughout the Rehabilitation Act, as amended by WIOA. Due to the impact of the definition of CIE on some providers of VR services and employers, CSAVR recommends that the Rehabilitation Services Administration (RSA) offer additional guidance and training for VR staff and others, on how State Agencies can maximize every employment opportunity for each VR consumer with whom they work and to assure they have all the information they need to determine what employment outcomes meet the definition of CIE.

Further, we share the concern noted in the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities' (ACICIEID) final report to Congress and the Secretary of Labor that the Ability One program has not evolved to reflect modern disability goals and support the call that federal law and regulations governing the program be amended to ensure the program provides competitive integrated employment opportunities and that the wage opportunities especially of these programs are not lost to individuals with disabilities.

We thank you again for the opportunity to provide input to the Department as to regulations that we feel are appropriate for repeal, replacement, or modification in accordance with Executive Order 13777. If you have any questions concerning our comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Wooderson", written over a faint, illegible typed name.

Stephen Wooderson
CEO

Revised 9/12/17

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