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April 6, 2021

Carol L. Dobak

Acting Deputy Commissioner

Rehabilitation Services Administration

Office of Special Education and Rehabilitative Services

U.S. Department of Education

550 12th St, SW

Washington, DC 20202

RE: Document Type: Proposed Rule; Document Citation: 86 FR 13511; CFR: 34 CFR 361; Agency/Docket Number: Docket ID ED-2021-OSERS-04; Document Number: 2021-04564; [*Frequently Asked Questions: Criterion for an Integrated Employment Location in the Definition of “Competitive Integrated Employment” and Participant Choice.*](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flnks.gd%2Fl%2FeyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDAsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTAzMDguMzY1MzQ4MDEiLCJ1cmwiOiJodHRwczovL3JzYS5lZC5nb3Yvc2l0ZXMvZGVmYXVsdC9maWxlcy9zdWJyZWd1bGF0b3J5L1JTQSUyMEZBUXMlMjAyMS0wMyUyMCUyODAzLjA4LjIxJTI5XzAucGRmP3V0bV9jb250ZW50PSZ1dG1fbWVkaXVtPWVtYWlsJnV0bV9uYW1lPSZ1dG1fc291cmNlPWdvdmRlbGl2ZXJ5JnV0bV90ZXJtPSJ9.da-Az-acs_JZkNWS7Z2kNq4ptnoWz6AkeJSFOxWPIOw%2Fs%2F662149143%2Fbr%2F99562636312-l&data=04%7C01%7CRobinsonW7%40michigan.gov%7C9b61a8fef6264451d79b08d8e23b65b7%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C1%7C637508092037229266%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=gdq5YAdXedn%2FecCfUsBBJsc5mXGlR7NH9QvCeSSBwdE%3D&reserved=0)

Dear Acting Deputy Commissioner Dobak, Delegated the authority to perform the functions and duties of the Commissioner:

The National Council of State Agencies for the Blind (NCSAB) represents the state vocational rehabilitation (VR) programs that provide vocational counseling, training, employment, and independent living training and services to blind, deaf/blind and visually impaired individuals. The mission of the NCSAB is to promote through advocacy, coordination, and education the delivery of specialized services that enable individuals who are blind, deaf/blind and visually impaired to achieve personal and vocational independence.

The NCSAB welcomes the opportunity to comment on the Frequently Asked Questions (FAQ 21-03) published on March 9, 2021.

The FAQs indicate that the “Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for further clarification of the definition of “competitive integrated employment,” particularly with respect to: (1) the criterion for an “integrated employment location” (i.e., the integration standards for the location of the employment) in the definition of “competitive integrated employment” for purposes of the Vocational Rehabilitation program; and (2) how the criterion for an integrated employment location in the definition affects a VR program participant’s ability to exercise informed choice.”

The NCSAB commends the Department for issuing the FAQs. The FAQs provide valuable guidance to VR agencies as they work with community rehabilitation programs (CRPs) to assist individuals with disabilities to achieve high-quality competitive integrated employment (CIE). By bringing together in one document the Department’s policy guidance concerning the many interrelated issues surrounding CIE,

the FAQs enable VR agencies and other stakeholders to easily find pertinent information related to CIE. It is particularly helpful to have the FAQs reference statutory and regulatory requirements together with long-standing Department sub-regulatory guidance.

Beginning in 2001, federal regulations redefined an employment outcome as integrated work performed in the community. The change established a policy in support of access to integrated employment for people with disabilities. The regulatory change did not eliminate extended employment as an option for people with disabilities. It did, however, direct the work of VR agencies in support of integrated work. In 2014, with the passage of the Workforce Innovation and Opportunity Act (WIOA), Congress affirmed the policy of integration when it defined an employment outcome as CIE. As with the 2001 regulatory redefinition of an employment outcome, when Congress determined that employment outcomes for purposes of the VR program were limited to CIE, it did not eliminate segregated work. Accordingly, a clear definition of CIE and the related definition of an integrated employment location are required to ensure that state VR agencies, CRPs, and VR consumers understand the purpose of the VR program. Only with clear information may VR consumers make truly informed choices concerning the type of employment and employment settings that best meet their individual needs.

The FAQs explain that the Rehabilitation Act “… makes clear that the VR program must be carried out in such a way that individuals with disabilities are provided with the opportunity to obtain competitive integrated employment.” Under the Act, the purpose of the VR program is CIE, and eligibility is conditioned on the individual’s intent to achieve CIE.

The NCSAB will not comment on each individual question contained in the FAQs; however, we believe that, taken together, they address the complex and often interrelated variables related to a clear definition of CIE.

With that said, we offer the following comments on specific guidance contained in the FAQs:

The NCSAB believes that the FAQs clearly define CIE. Specifically, we appreciate the language that, “To be considered ‘competitive integrated employment,’ a job position must satisfy three criteria related to wages/benefits, integration, and opportunities for advancement,” (Q1). To meet the CIE definition, wages and opportunities for advancement must be considered together with the degree of interaction with the public. The NCSAB believes that this reflects a holistic definition that seeks to separate integrated employment from segregated or congregate work settings and is very helpful.

The FAQs acknowledge that “There is a wide continuum of employment opportunities available for individuals with disabilities.” (Q3) Nevertheless, the VR program is limited to services that support CIE. If individuals with disabilities, after being told in detail about the purpose of the VR program and the possibility of attaining CIE, definitively select segregated employment, the VR agency’s responsibility is limited to information and referral.

NCSAB agrees that the determination of whether a job position meets the definition of CIE must be made by the VR agency based on an evaluation of the position in question (Q4). In making the determination, one problem with which VR agencies struggle is the question of what is meant by “typically found in the community.”

We believe the FAQs contain a clear description of what is meant by “typically found in the community” (Q8). Specifically, we agree that “… employment location settings established specifically for the purpose of employing individuals with disabilities are not “typically found in the community” because such settings are not typically found in the competitive labor market.” The NCSAB believes that this is a clear description of the first prong of the two-pronged criterion for an integrated employment location that must be satisfied for a job position to meet the definition of CIE.

The FAQs go on to say, “One factor that often signals a distinction between those job positions that are “typically found in the community” and those that are not, is whether the job position is open to all applicants regardless of disability status. For example, if a job position is required by law to comply with a direct labor-hour ratio of individuals with disabilities, it is likely not considered “typically found in the community,” (Q9). This is a helpful and important description of what is and is not a job that is typically found in the community.

To meet the definition of CIE, the position must be one that is typically found in the community, and it must be in an integrated setting (Q11). As stated in the FAQs, “…the best measure of integration in an employment setting for individuals with disabilities is to require parity with the integration experienced by workers without disabilities in similar positions.”

VR agencies are frequently asked to defend why a segregated job that pays good wages and benefits is a “bad job” while a minimum wage job in the community is a “good job.” Of course, a high paying job may be viewed by the individual with a disability as a “good job,” but that is a separate question from integration. CIE seeks to define integrated work in the community from segregated work designed for the purpose of employing people with disabilities. The two concepts are separate. Integrated versus segregated jobs is not the same as good versus poor jobs, and the two must not be conflated. The Department addresses this issue in Q15: “Do group employment settings, such as janitorial and landscaping crews in which individuals with disabilities earn competitive wages, satisfy the definition of “competitive integrated employment”?” CIE requires that the individual be paid at least the minimum wage and no less than the prevailing wage, but it does not mean that every job that is CIE is a “good job”, and every segregated job is a “bad job.”

It is up to the individual to decide whether a specific job is either good or bad, and it is up to the individual to decide whether integration is an essential element of work. Informed choice respects the individual’s right to determine how important integration is in relation to other factors (Q19). With that said, the VR program is charged with assisting individuals with disabilities to achieve CIE. That is not inconsistent with informed choice; it only means that the availability of VR services is one of the considerations the individual must consider when determining whether CIE or segregated work best meets the individual’s needs.

The Department says, “Despite the Rehabilitation Act’s heightened emphasis on the achievement of competitive integrated employment as an employment outcome under the VR program, we recognize there are times when an individual with a disability, after discussing all available employment options with a VR counselor … will choose to pursue work that is not considered “competitive integrated employment” and will not result in an “employment outcome” under the VR program,” (Q20).

Importantly, the Department goes on to say, “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.”

The NCSAB believes that informed choice is a bedrock principle in the Rehabilitation Act. That means that individuals with disabilities must have the choice to pursue the employment best suited to their needs. To make an informed choice, individuals must have clear information about the purpose of the VR program and how it may assist them in attaining CIE. If people elect segregated work, that is a choice that must be respected, but it does not mean that future opportunities to attain CIE are foreclosed (Q22).

Conclusion

The NCSAB appreciates the thorough and careful attention the Department has given to addressing a complex and often controversial policy issue.

We respect the choices individuals with disabilities make and firmly believe that clear information is at the heart of informed choice. We recognize, however, that the disability rights movement has placed a priority on integration. That is not surprising given the exclusion that has characterized the lives of countless people with disabilities. Still, valuing and promoting integration does not mean that people who elect segregated work are somehow less able or less valuable people or that it is acceptable to disparage them and their choices. We believe the VR program has made great strides in balancing a policy that promotes integration with the right of people to decide for themselves what is in their best interests. Our job is to help people with disabilities to learn about the range of opportunities that are available to them, and, if they express an interest in CIE, to actively engage them in VR services to help them attain their goals.

The FAQs support our understanding of the role of the VR program and give explanation and clarity of many of the questions that arise as we work with our CRP partners and VR consumers.

Very Truly Yours,

William A. Robinson

President, NCSAB

cc: NCSAB Executive Committee