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TECHNICAL ASSISTANCE CIRCULAR
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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
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SUBJECT: Factors State Vocational Rehabilitation Agencies Should Consider When
Determining Whether a Job Position Within a Community Rehabilitation
Program is Deemed to be in an "Integrated Setting" for Purposes of the
Vocational Rehabilitation Program

PURPOSE: Recently, the U.S. Department of Education has received a number of
inquiries from community rehabilitation programs (CRP) concerning the
interpretation of the term "integrated setting" for purposes of determining
whether placements at these CRPs qualify as "employment outcomes"
through the vocational rehabilitation (VR) program.

In this Technical Assistance Circular (TAC), the Rehabilitation Services
Administration (RSA) provides factors that state VR agencies should
consider when analyzing whether a particular work-unit (in which an
individual with a disability is seeking a job) within a CRP satisfies the
definition of "integrated setting" for employment purposes and, thus,
constitutes an employment outcome under the VR program for that
individual with a disability.

BACKGROUND: For many years, the federal government has worked to ensure equality and
the full inclusion of persons with disabilities in American society,
including the workplace. Congress has addressed these goals by

interweaving them throughout the Rehabilitation Act of 1973, as amended (Act). In particular, Congress recognized that “individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided” (Section 100(a)(1)(C) of the Act).

RSA has taken a number of steps to implement these goals in its policies by emphasizing choice in the pursuit of quality, competitive, and integrated employment through the VR program. One of the most significant steps RSA has taken in this regard occurred on January 22, 2001, when RSA issued final regulations revising the definition of “employment outcome” for purposes of the VR program to mean employment in an integrated setting (Final Regulations for State VR Services Program, 66 Fed. Reg. 7249 (January 22, 2001) (Final Extended Employment Regulations)). The purpose of the regulations was "to ensure, as we believe Title I of the Act intends, that participants in the VR program, particularly those with significant disabilities, are afforded a full opportunity to integrate within their communities and participate in jobs that are available to the general population" (Final Extended Employment Regulations, 66 Fed. Reg. 7249, 7251 (January 22, 2001)). The definition of “employment outcome,” found in 34 CFR 361.5(b)(16), now reads as follows:

Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in §361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

As a result of this revision, extended employment no longer satisfies the definition of "employment outcome" for purposes of the VR program. The VR program regulations define “extended employment” as “work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act” (34 CFR 361.5(b)(19)). As we noted in the preamble to the Final Extended Employment Regulations, state VR agencies are still permitted to serve individuals with disabilities in extended employment settings for purposes of preparing those individuals for employment in integrated settings.¹

A key component of the definition of "employment outcome," as revised in 2001, is the use of the term "integrated setting." The definition of "integrated setting," as used in the context of employment outcomes, can be found in 34 CFR 361.5(b)(33)(ii) and reads as follows:

With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

Note that the term "integrated setting" also is a key component of the definition of "competitive employment." Regulations found at 34 CFR 361.5(b)(11) define "competitive employment" to mean work:

- (i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

It is against this background that RSA issues this TAC for state VR agencies to use when analyzing whether a particular work-unit within a CRP satisfies the definition of "integrated setting" for employment purposes and, thus, constitutes an employment outcome under the VR program.

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The legislative and regulatory history associated with the term "integrated setting" has focused on whether individuals with disabilities have the opportunity in their job positions to interact with non-disabled persons to the same extent that non-disabled persons in comparable positions interact with others. The Final Regulations for the state VR services program that implemented the definition of "integrated setting" "establish[ed] a standard of integration with respect to employment outcomes that is based on ensuring the same level of interaction by disabled individuals with non-disabled persons as that experienced by a non-disabled worker in the same or similar job" (62 Fed. Reg. 6307, 6311 (Feb. 11, 1997)). Thus, "integrated settings" were to be distinguished from "sheltered settings" where individuals with disabilities have few opportunities to interact with non-disabled persons. This intent was reinforced in the Senate Committee Report that accompanied the 1998 amendments to the Act:

[A]though not identified as a definition in section 7, the term "integrated setting," as referenced throughout the statute, is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with co-workers who do not have disabilities; and where workers with disabilities are not congregated. (Senate Report 105-166, page 10, March 2, 1998).

Therefore, the determination as to whether a particular work-unit, in which the particular job position is located, satisfies the definition of "integrated setting" and, thus, constitutes an employment outcome for purposes of the VR program hinges on the level of opportunities for interaction between the individual with a disability holding that position and non-disabled individuals.

As indicated earlier, this TAC focuses on employment positions within CRPs, particularly those CRPs that operate under contracts funded pursuant to the Javits-Wagner-O'Day (JWOD) program. However, it is important to note that not all CRPs operate exclusively under JWOD contracts. For CRPs that provide employment opportunities for individuals with disabilities under the JWOD program, the very nature of the JWOD programⁱⁱ may raise questions as to whether the employment position at such a CRP sought by an individual with a disability through the VR program satisfies the definition of "integrated setting" and, thus, would constitute an "employment outcome." Factors that typically distinguish JWOD-funded job positions from other positions include: (1) allowances under the Fair Labor Standards Act for compensatory sub-minimum wages; and (2) mandated direct labor-hour ratio of persons with disabilities. These factors are important when analyzing whether a particular work-unit within a CRP satisfies the definition of "integrated setting" and, thus, constitutes an employment outcome under the VR program because they are critical elements of the definitions pertinent to this analysis, namely, "integrated setting," "employment outcome," and "extended employment."

Nevertheless, the mere fact that a CRP operates under one or more JWOD contracts is not determinative of whether a job position within that CRP satisfies the definition of an "integrated setting."ⁱⁱⁱ Instead, when this question is raised, the state VR agency should conduct further analysis, as described below, to make a determination as to whether a particular work-unit, which houses the particular job position sought by an individual with a disability, would be deemed to be an "integrated setting" because the individual with a disability has the opportunity to interact with non-disabled individuals, other than service providers, to the same extent that non-disabled individuals in comparable positions interact with other persons. While RSA recognizes that job positions obtained through JWOD

contracts can be performed in “integrated settings,”^{iv} it is essential that state VR agencies make the determination on a case-by-case basis by reviewing all pertinent facts of the employee's position.

In addition to job placements in CRPs that operate under JWOD contracts, job placements in CRPs that fall into the following two categories raise potential questions as to whether an individual's employment position would be deemed to be in an "integrated setting" for purposes of the VR program:

- Placements in 501(c)(3) tax-exempt non-profit organizations classified under the National Taxonomy of Exempt Entities (NTEE) Classification System as a Sheltered Remunerative Employment, Work Activity Center.
- Placements in organizations which utilize section 14(c) of the Fair Labor Standards Act to pay special minimum wages – less than the federal minimum wage – to individuals with disabilities.

We recommend that the state VR agency consider the following factors when making its determination about a particular employment position at a particular CRP:

1. Level of interaction of the individual with disabilities with non-disabled persons within that individual's entire work-site.^v
2. Level of interaction of the individual with disabilities with non-disabled persons within that individual's work-unit.
3. Level of interaction of the individual with disabilities with other non-disabled persons, such as customers or vendors.

We believe that consideration of all of these factors, taken together, will provide the state VR agency with the information it needs to make each case-by-case determination. The state VR agency may decide it is prudent to conduct an on-site visit of the potential employment setting before making a determination as to whether the job is in an integrated setting and, therefore, qualifies as an employment outcome through the VR program. It is important for a State VR agency to determine whether a VR consumer has achieved an employment outcome in an integrated setting because section 101(a)(14) of the Act requires the VR agency to conduct an annual review and reevaluation of any VR consumer who accepts employment in an extended, or non-integrated or sheltered, setting. The purpose of the annual review is to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment. Furthermore, application of this analysis will assist a VR agency to make appropriate determinations of whether an individual has achieved an employment outcome so that the agency can accurately report to RSA the number of individuals achieving employment

outcomes each year, as required by section 101(a)(10)(C)(iii) and (iv) of the Act.

SUMMARY: The VR agency in each state must determine on a case-by-case basis if the particular work-unit, which houses the individual's job position, satisfies the definition of "integrated setting" and, thus, constitutes an employment outcome under the VR program. This determination must be made with respect to all employment positions sought by VR consumers at CRPs, not only those funded under JWOD contracts. We believe it is essential that the state VR agency analyze whether the work-unit which houses the actual position sought by the individual with a disability constitutes an "integrated setting" because it is possible that certain work-units within a CRP would satisfy the definition of "integrated setting" whereas others may not.

CITATIONS: Javits-Wagner-O'Day Act, 41 USC 46-48c; Rehabilitation Act of 1973, as amended, 29 USC 721(a)(10) and (14).
34 CFR 361.5(b)(11), (16), (19) and (33)(ii); 41 CFR 51-1.3.

INQUIRIES: RSA Commissioner at (202) 245-7488

/s/
Edward Anthony, Ph.D.
Delegated the authority to perform
the functions of Commissioner for the
Rehabilitation Services Administration

cc: Council of State Administrators of Vocational Rehabilitation
Consortia of Administrators of Native American Rehabilitation
National Disability Rights Network
National Council on Independent Living

ⁱ Final Extended Employment Regulations, 66 Fed. Reg. 7249, 7250 (January 22, 2001).

ⁱⁱ The JWOD (41 USC §§46-48c and 41 CFR Part 51) program provides employment opportunities for individuals who are blind and/or have other significant disabilities. The Committee for Purchase From People Who Are Blind or Severely Disabled is appointed by the President to provide federal oversight of the implementation of JWOD policy and the procurement of products and services by the federal government. To qualify for the JWOD program, a non-profit agency must, in furnishing commodities and services, employ persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services (see 41 USC §48b and 41 CFR 51-1.3).

ⁱⁱⁱ See Notice of Proposed Rulemaking for State VR Services Program, 65 Fed. Reg. 39491, 39493 (June 26, 2000); and Final Extended Employment Regulations, 66 Fed. Reg. 7249, 7251 (January 22, 2001). Other discussion of the regulatory history about "integrated setting" can be found at: Notice of Proposed Rulemaking VR Regulations,

60 Fed. Reg. 64475, 64479-64480 (Dec. 15, 1995); and Final Regulations State VR Services Program, 62 Fed. Reg. 6307, 6311-6312 (Feb. 11, 1997).

^{iv} Final Extended Employment Regulations, 66 Fed. Reg. 7249, 7251 (January 22, 2001).

^v We want to point out that entities that are set up specifically for the purpose of providing employment to individuals with disabilities will likely not satisfy the definition of “integrated setting.” The high percentage of individuals with disabilities employed with these entities most likely would result in little to no opportunities for interaction between individuals with disabilities and non-disabled individuals. These entities, therefore, would be considered sheltered or non-integrated employment sites. (Final Regulations State VR Services Program, 62 Fed. Reg. 6307, 6311 ((Feb. 11, 1997)).