

Editorial

A comment on the removal of extended employment as an approved employment outcome for individuals served by vocational rehabilitation

On January 22, 2001, the Rehabilitation Services Administration of the US Department of Education amended the regulations governing the State Vocational Rehabilitation Program to redefine the term *employment outcome* to mean *an individual with a disability working in an integrated setting* [2]. Historically within State Vocational Rehabilitation (VR), extended employment (sometimes referred to as non-integrated or sheltered employment) was an approved potential employment outcome for individuals with a disability who received VR services. Because extended/sheltered employment utilizes non-integrated work settings, the redefining of an employment outcome for a VR participant to mean 'work in an integrated setting' removes extended/sheltered employment as an approved potential employment outcome for Vocational Rehabilitation services.

The purpose of the Vocational Rehabilitation program, as stated in The Rehabilitation Act of 1973, as amended, is to enable individuals with a disability to achieve an employment outcome in an integrated setting [2]. In response to the priority on employment outcomes in integrated settings first highlighted in the 1992 Amendments to the Rehabilitation Act of 1973, the decade of the 1990s was marked by a continual decrease in the use of the sheltered employment as an employment outcome by Vocational Rehabilitation agencies. For example, VR agencies nationally closed 11,605 in sheltered employment in Fiscal Year (FY) 1990; by FY 1998, the number of sheltered employment VR closures dropped 34% to 7,633. In contrast, the number of persons closed by VR in supported em-

ployment, an employment outcome marked by the use of integrated work settings, rose steadily during the 1990s. For example, VR closed approximately 9,528 persons in supported employment in FY 1991, 13,950 in FY 1994, and 23,056 in FY 1998 [5].

Wage opportunities are a key factor in the movement by VR away from sheltered employment to more integrated employment outcomes. The average wage for persons closed in sheltered employment by VR in FY 98 was \$2.54 per hour and \$64.51 per week; the corresponding wage information for persons closed by VR in supported employment during the same time period was \$5.88 per hour and \$142.93 per week. These wage differences are consistent across various disability groupings. For example, individuals with a primary disability classification of moderate mental retardation closed in sheltered employment by VR in FY 98 earned on average \$2.04 per hour and \$50.71 per week; the corresponding wage information for persons in this disability classification closed by VR in supported employment during the same time period was \$5.24 per hour and \$112.09 per week [5]. The Federal minimum wage increased from \$4.75 to \$5.15 per hour as of September 1, 1997, one month before the start of federal FY 1998.

A critically important policy consideration for Vocational Rehabilitation in implementing the amended definition of an employment outcome is the functional meaning of the term *work in an integrated setting*. Current VR regulations define integrated setting as being a setting typically found in the community where individuals with a disability interact with non-disabled in-

dividuals, other than non-disabled individuals who are providing services to the individuals with a disability, to the same extent that non-disabled individuals in comparable positions interact with other persons [2]. The general wording of the terms “setting typically found in the community” and “interact with non-disabled individuals to the same extent as non-disabled persons in comparable positions” allows for various interpretations on what actually constitutes an integrated setting.

The preamble to the 1997 Vocational Rehabilitation regulatory announcement frames integration in the context of the *parity principle* by asking the question: Is the experience of the person with a disability at parity with the experiences of the non disabled co-worker [4]? Consideration of the parity of experiences between the worker with a disability and the non-disabled co-worker leads directly to the following series of questions:

- How is the person with a disability hired? Is s/he hired by the business where the work is being performed or is s/he an employee of an employment services organization?
- How is the person with a disability supervised? Is s/he supervised by an employee of the business where the work is being performed or by an employee of an employment service organization?
- Is the individual with a disability paid comparable wages and benefits to co-workers who are not disabled?
- Does the employee with a disability have the same career advancement opportunities within the worksite as co-workers who are not disabled, as well as having equal access to resources at the work place such as Employee Assistance Programs?
- Is there full social access to co-workers who are not disabled and is there an absence of a congregation of persons with disabilities within the work site?

The extent to which these or similar questions should be used as measures of integration and “settings typically found in the community” has not been clarified by the Rehabilitation Services Administration. Without this clarification, jobs can potentially be considered competitive employment where the singular measure of integration being applied is the presence of co-workers who are not disabled without consideration of other key measures of settings typically found in the community. This uncertainty by Vocational Rehabilitation agencies, its vendors, and persons with a disability served by VR over just what is meant by an integrated setting could easily weaken the impact of the recent amending of the definition of an acceptable VR employment outcome.

There is a second critical policy consideration for RSA in implementing the amended employment outcome definition. The regulatory definition of a supported employment outcome allows for individuals to be *working toward competitive employment*, meaning that a person is earning sub-minimum wage but is working towards achieving minimum wage [3]. RSA has not clearly defined “working towards competitive employment” in terms of a timeline or a job sequence. For example, a person is working in a job in an integrated setting and is earning less than minimum wage; the individual’s goal is to work in a job that pays at least minimum wage. If a job change is required at some future point for this individual to have a strong likelihood of achieving minimum wage, does the individual meet the regulatory standard for “working towards competitive employment”?

A potential example of this situation is a group of individuals with a disability working on a mobile crew and earning less than minimum wage. To reach minimum wage, a crew member would most likely have to leave the crew and work in another position. Can the original sub-minimum wage paying crew position be considered an acceptable employment outcome under current RSA rules if an actual job change is necessary for the worker to achieve a minimum wage paying employment outcome? The answer to this question is not clear under current RSA regulatory guidance. Therefore, sub-minimum wage placements, such as the crew example used here, that have little potential to generate minimum wage could be considered a legitimate supported employment placement if it is viewed as working towards competitive employment.

RSA has not issued any substantial clarification or description of just what is intended by the term “working towards competitive employment” and therefore has left a lot of uncertainty in the implementation of this component of the definition of an employment outcome related to supported employment. Working towards competitive employment can be proactively interpreted to involve the presence of a clearly identified opportunity in the current job to reach minimum wage and the presence of an ongoing support plan describing how minimum wage will be achieved. It is uncertain whether this interpretation matches the intended regulatory meaning of “working towards competitive employment”.

The January 22, 2001 change in the definition of employment outcomes for Vocational Rehabilitation to require work in an integrated setting is an important milestone in the movement, fostered by the Amer-

icans with Disabilities Act, to full community integration of persons with a disability at work and elsewhere in their lives. However, the actual impact of this change is relatively small in terms of the full array of programs serving people with disabilities in non-integrated settings. For example, the recent publication, *The State of the States in Developmental Disabilities: 2000* [1], reports that state Mental Retardation/Developmental Disabilities agencies served in FY 1998 approximately 372,000 individuals in day, work, and sheltered employment programs that did not involve supported/competitive employment. In comparison, approximately 97,500 persons were served by these agencies in supported/competitive employment, an approximate 4:1 ratio of non-competitive to competitive work outcomes for persons served by MR/DD agencies. For persons served by the Medicaid Home and Community Based, a another recent report [6] indicated that in FY 1999, only about 15% of the more than 130,000 persons receiving day habilitation services through the HCB Waiver were in supported employment. The rest were in a variety of day habilitation service categories that were not competitive work oriented and frequently not community integrated. These reports dramatically demonstrate that for many people with significant disabilities, being served in non-integrated settings continues to be their dominant experience.

The change in the VR definition of an employment outcome to require work in an integrated setting, al-

though a critically important recognition of the clearly stated purpose of the Rehabilitation Act of 1973, as amended, leaves intact a dominant system of non-community integrated day and work services in the United States for persons with significant disabilities.

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