

From: Greg Lambert [greg@lambertvocational.com]
Sent: Friday, March 02, 2001 9:47 AM
To: MNREHAB
Subject: Comment on VR Sheltered Work Rule

Fred Schroeder, schroede@interwork.sdsu.edu, writes;

January 22, 2001, a final regulation was published making placement in sheltered work no longer an allowable outcome for rehabilitation customers. This means that people with disabilities now have the right to pursue integrated work and cannot be tracked into segregated employment simply because someone thinks they belong there. People who want sheltered work can still go to sheltered workshops, but, the rehabilitation agency will only receive credit for a successful closure if the person obtains integrated work. This should encourage rehabilitation agencies to stretch to help people find integrated work.

On Inauguration Day, the Bush Administration announced that it would review regulations issued by the Clinton Administration in its last days. Accordingly, the sheltered workshops have started a letter writing campaign asking the Secretary of Education, Rod Paige, to review and undo the regulation requiring integrated employment for people served by the rehabilitation system. Hundreds of letters have been sent to Secretary Paige saying that the regulation limits the right of people with disabilities to go into segregated work. They argue that sheltered work has changed and no longer pays poor wages, but, now regularly pays well above the Minimum Wage and offers good benefits. This is difficult to believe since, according to data from the Rehabilitation Services Administration, in 1998, nearly 90% of people placed in sheltered work by rehabilitation agencies received less than the Minimum Wage. In fact, the average hourly wage for sheltered work placements was \$2.65 ,

Write the Secretary at: The Honorable Roderick R. Paige, Secretary, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. Below is a more complete description of the rule and what it does and does not do.

Thanks for your help.

BACKGROUND

The State Vocational Rehabilitation Services Program (VR program) is authorized under Title I of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 701-744). The VR program makes available to individuals with disabilities, with priority given those with significant disabilities, necessary Vocational rehabilitation (VR) services so that they may prepare for and engage in gainful employment consistent with their strengths, priorities, concerns, abilities, capabilities, interests, and informed choice. The chief measure of success of a State VR agency's efforts in serving a participant in the VR program is whether the individual has achieved an appropriate employment outcome, in particular a high-quality, competitive job in an integrated setting.

The new rule amended the regulations governing the VR Program (34 CFR part 361) by revising the scope of available employment outcomes under the program. The new regulation revised the past regulatory definition of the term "employment outcome" to include only those outcomes in which an individual with a disability works in an integrated setting. "Integrated settings" are those that are typically found in the community in which individuals with disabilities have the same opportunity to interact with others as is afforded any other person (34 CFR 361.5(b)(30)(ii)). Extended employment, which refers to work in non-integrated or sheltered settings

performed by individuals with disabilities is no longer an authorized employment outcome under the regulations.

This action to restrict the term "employment outcome" to include only jobs in integrated settings was necessary to reflect the emphasis that Title I of the Act has placed, over time, on the ability of individuals with disabilities to perform work in integrated settings to the same extent as the non-disabled population. More specifically, the change was necessary to implement the expectation in the law that participants in the VR program receive the VR services they need to pursue an appropriate employment outcome in the competitive, integrated labor market.

Still, the new regulations continue to allow State agencies to use extended employment jobs as interim steps for VR program participants. The State agency, however, can only consider an individual to have achieved an employment outcome after the individual transitions to integrated work in the community.

The regulatory change, while essential to fulfilling the expectation in the Act that individuals with disabilities are capable of pursuing competitive, integrated work in the community, should not cause great difficulty to State VR agencies in administering their programs. Given the relatively small number of individuals who exit the VR program after obtaining non-integrated employment (about 3.5% of outcomes nationwide in recent years), it is clear that many State agencies already have been de-emphasizing non-integrated work as a final employment goal for some time. Those agencies have come to realize, as is reflected throughout the Act's legislative history, that in the past individuals with disabilities were too often placed in sheltered settings as a final outcome rather than as a temporary placement from which the individual could transition to a job in the community.

Nevertheless, opposition to the rule has been raised by many community rehabilitation programs that currently operate extended employment programs or set-aside employment programs for individuals with disabilities. Set-aside programs such as those established under the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. 46-48, require governments (in the case of JWOD, the Federal Government) to purchase products or services provided by facilities whose workforce is primarily comprised of people with disabilities. Those facilities rely on the VR program, as well as other programs, for referrals of persons in order to ensure a constant workforce. However, since most costs of employing persons with disabilities at the sheltered facility are born by programs other than the VR program, and since State VR agencies could continue to place persons in extended employment (without considering those placements permanent Employment outcomes), opposition from the facilities is not compelling. Moreover, any opposition is significantly outweighed by the positive impact that the changes in this new rule will have on individuals with significant disabilities who, in the past, have been routinely placed in extended employment rather than assisted in pursuing integrated work in the community.

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