

September 5, 2017

The Honorable Betsy DeVos  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Secretary DeVos:

The undersigned organizations are writing to express our strong opposition to the July 28, 2017 letter sent to you and signed by 45 members of Congress, asking for changes in the regulations that define “Competitive Integrated Employment” in Title IV of the Workforce Innovation and Opportunity Act (WIOA). The congressional letter states that the implementing regulations and sub-regulatory guidance from the Rehabilitation Services Administration (RSA) are having a negative impact on AbilityOne Programs, in terms of placements by state Vocational Rehabilitation agencies. (AbilityOne is a federal set-aside program authorized by the Javits-Wagner-O’Day act where organizations receive contracts from the federal government for goods and services; at least 75% of the hours worked to fulfill these contracts must be performed by individuals who are blind or have significant disabilities.) The Congressional letter specifically asks you to remove the following from the sub-regulatory guidance: *“that the following factors would generally result in a determination that the placement does not meet the WIOA definition of competitive integrated employment: (1) the funding of positions through Javits-Wagner-O’Day (JWOD) Act contracts or State purchase programs; (2) allowances under the Fair Labor Standards Act for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities.”* The letter also requests the issuance of regulations that allow AbilityOne to continue to receive state referrals and placements.

As advocates for the full inclusion and integration of individuals with disabilities, working side-by-side with individuals without disabilities in the general workforce, the undersigned organizations strongly oppose this effort to make changes to the WIOA definition of Competitive Integrated Employment for the following reasons:

- 1. The regulations are very much aligned with Congressional intent and long-standing Department of Education policy:** The WIOA legislation states that employment must be *“at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons.”* The subsequent regulations are very much aligned with Congressional intent, in specifying that the location must be one that is *“typically found in the community,” “where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities.”* The regulations specifying interactions within the work unit are part of long-standing Department of Education policy since at least 2005 (November 2005, RSA-TAC-06-01: *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*, <https://www2.ed.gov/policy/speced/guid/ras/subregulatory/tac-06-01.pdf>)

2. **AbilityOne's mandated direct labor-hour ratio generally leads to an environment that is not integrated:** Under current statute, at least 75% of the hours of worked to fulfill an AbilityOne contract must be performed by individuals who have a significant disability. As such, AbilityOne work environments generally cannot meet both the definition of integration in terms of level of interaction and the mandated direct labor-hour ratio. The congressional letter incorrectly states that using a mandated direct labor-hour ratio of persons with disabilities as a criteria that generally does not constitute Competitive Integrated Employment is new and a regulatory overreach. Such a factor in determining whether a placement is integrated has been in place since at least 2005 via the above cited policy document from the Department of Education.
3. **Under WIOA, a federal advisory committee has found that AbilityOne is not aligned with Competitive Integrated Employment and has called for the program's reform:** As part of WIOA, Congress mandated the establishment of the *Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities* (ACICIEID). In its final report to Congress and the Labor Secretary in September 2016 ([https://www.dol.gov/odep/topics/pdf/ACICIEID\\_Final\\_Report\\_9-8-16.pdf](https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf) - pp. 57-61), the ACICIEID stated that "AbilityOne has not evolved to fully reflect modern disability policy goals, including those enshrined in the ADA and the Supreme Court's decision in *Olmstead v. L.C.*," and that in its current design AbilityOne may inhibit increased Competitive Integrated Employment. Noting significant issues with AbilityOne, including the segregation of workers in AbilityOne from the mainstream workforce, the lack of pathways to employment in typical private and public sector employment settings, and a lack of oversight regarding aligning AbilityOne with federal disability policy, the Committee recommended a comprehensive series of changes and reforms to the program. To allow placements in AbilityOne programs as Competitive Integrated Employment is in complete conflict with these recommendations and is at odds with current federal disability policy. A more appropriate solution to the concerns raised in the letter is for Congress to amend the statutes governing AbilityOne in line with the recommendations by the ACICIEID, so that AbilityOne facilitates the achievement of Competitive Integrated Employment for people with disabilities.
4. **By statute, AbilityOne is not competitive employment:** Under the current statute authorizing AbilityOne, to be eligible to work on an AbilityOne contract, an individual with a disability must be legally blind or must have a physical or mental disability that "constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment." (41 U.S.C. §8501) To be clear, the undersigned take issue with that concept that a person's disability can preclude them from participating in competitive employment, and feel strongly, as stated in numerous Department of Education support documents for WIOA, "*that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary skills and supports.*" As noted above, AbilityOne should be reformed by Congress to reflect this. However, until that occurs, AbilityOne programs should not generally qualify as Competitive Integrated Employment, when the law currently authorizing AbilityOne specifically states that AbilityOne exists to employ individuals who cannot engage in competitive employment.
5. **Consistent with longstanding policy, placements in AbilityOne are still permitted if they are in integrated settings:** RSA has been very clear in its guidance that while AbilityOne placements raise concerns and generally will not meet the standards for an integrated setting, placement in AbilityOne is

still allowed, with a determination regarding Competitive Integrated Employment to be made on a case-by-case basis, in line with long-standing RSA policy.

- WIOA requires employment at minimum wage or higher:** The letter from members of Congress stated that among the factors that are having a negative impact on Ability One programs, is the requirement that an organization would not meet the criteria for competitive integrated employment if it is allowed to pay subminimum wage. The letter claims this criteria is nowhere to be found in the WIOA law. In fact, the definition for Competitive Integrated Employment in WIOA itself states that the placement must provide compensation at or above the federal, state, or local minimum wage, whichever is higher.

Thank you for your consideration and attention to this matter. If you have any questions or need further information, please contact Jenny Stonemeier, Interim Executive Director of the Association of People Supporting Employment First (APSE) at (301) 279-0060 or [jstonemeier@apse.org](mailto:jstonemeier@apse.org) or Alison Barkoff, Policy Advisor to the Collaboration to Promote Self-Determination (CPSD) at (202) 854-1270 or [abarkoff@cpr-us.org](mailto:abarkoff@cpr-us.org).

Sincerely,

Association of People Supporting Employment First (APSE)  
Association of University Centers on Disabilities (AUCD)  
Autism Society of America  
Autistic Self-Advocacy Network (ASAN)  
Bazelon Center for Mental Health Law  
Center for Public Representation (CPR)  
Collaboration to Promote Self-Determination (CPSD)  
Council of State Administrators of Vocational Rehabilitation (CSAVR)  
Institution for Educational Leadership  
National Association for Rights Protection and Advocacy (NARPA)  
National Association of Councils on Developmental Disabilities (NACDD)  
National Association of State Directors of Special Education (NASDSE)  
National Council of Independent Living (NICL)  
National Disability Institute (NDI)  
National Down Syndrome Congress (NDSC)  
National Federation of the Blind (NFB)  
National Organization on Disability (NOD)  
TASH  
The Arc of the United States

cc:

Office of General Counsel – U.S. Department of Education  
Representative Kristi Noem  
Representative Cathy McMorris Rodgers  
Representative Kevin Brady  
Representative Luke Messer  
Representative Doug LaMalfa  
Representative Earl L. Carter

Representative Susan W. Brooks  
Representative Phil Roe  
Representative Tim Walberg  
Representative Todd Rokita  
Representative Glenn Thompson  
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Representative Carlos Curbelo  
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Representative Chuck Fleischmann  
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Representative Pete Sessions  
Representative Markwayne Mullin  
Representative Blake Farenthold  
Representative Leonard Lance  
Representative Jeff Fortenberry  
Representative Mike Coffman