



November 27, 2018

Secretary Betsy DeVos
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-7100

Dear Secretary DeVos,

The undersigned organizations write to express our continued strong opposition to any efforts by the U.S. Department of Education to open existing regulations implementing the Workforce Innovation and Opportunity Act (WIOA) of 2014. We were dismayed to see that the WIOA implementing regulations, 34 CFR part 361, were included on the Secretary's Fall Unified Agenda, with an estimated date of January, 2019 for regulatory action.

As we described in our July 9 letter to you and reiterate today, we believe that opening the WIOA regulations will undermine implementation of the law, which establishes competitive integrated employment (CIE) as a clear national priority built on the goal of economic self-sufficiency established in the bipartisan Americans with Disabilities Act (ADA). WIOA also prioritizes the transition of youth with disabilities from school to CIE and aligns with the Individuals with Disabilities Education Act's (IDEA) goal of educating students with disabilities alongside their peers without disabilities. The Department's WIOA regulations not only reflect Congressional intent to prioritize CIE and align WIOA with the ADA and IDEA, but they also codify long-standing Department of Education policy. We strongly believe that opening the regulations is unnecessary and that any concerns that the Department may have, or misinformation that exists in the field, can be addressed most effectively through technical assistance and other sub-regulatory guidance.

Two federal reports issued in the last month share our view that opening the WIOA regulations is unnecessary and would, in fact, be counterproductive. Both reports recommend that the Department provide technical assistance. On October 11, 2018, the National Council on Disability, the independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities, issued "From the New Deal to the Real Deal: Joining Industries of the Future."¹ The report discusses the definition of CIE in WIOA and its implementing regulations and finds that they reflect long-standing law and policy of the Rehabilitation Act and regulations and align with the requirements of the ADA and the Supreme Court's decision *Olmstead v. L.C.* NCD

¹ https://www.ncd.gov/sites/default/files/New%20Deal%20to%20Real%20Deal%20FINAL_508.PDF

found that any confusion or misunderstanding by state vocational rehabilitation (VR) agencies about how to apply the CIE definition is not a result of the regulations – which clearly call for VR counselors to consider employment settings on a case-by-case basis – but instead indicate a need for more technical assistance to state VR agencies. Thus, **“NCD recommends to the Department of Education, including the Office of Special Education and Rehabilitative Services, that the WIOA regulations – specifically the definition of competitive, integrated employment – not be reopened for public comment or amendment because the consensus of the disability, business, and employment service provider communities is that the current regulations are of vital importance to the modernization of employment service systems and efforts to on-board people with disabilities into jobs in the economic mainstream.”**

The Senate Health, Education, Labor and Pension (HELP) Committee also issued a report making similar recommendations titled, “Disability Employment: Outdated Laws Leave People with Disabilities Behind in Today’s Economy, Minority Staff Report.”² The HELP Committee collected information from all 79 state VR agencies looking at how they were applying the new definition of CIE, particularly with respect to AbilityOne settings. With a 100% response rate, state VR agencies reported that they do refer clients to AbilityOne setting that meet the CIE definition, that they do conduct case-by-case analyses all employment settings about whether they meet the definition of CIE, and that they do make referrals for clients who make an informed choice of a setting that does not meet the definition of CIE. The report concludes that **“The regulations promulgated by the U.S. Department of Education should not be changed at this time. Technical assistance should be provided by the Rehabilitative Services Administration to support state-level implementation of the law and existing regulation.”**

As you review the WIOA regulations, we hope you will closely consider the information in these two reports and the views of the wide range of undersigned organizations that strongly oppose opening the regulations and encourage you to seek other options, including technical assistance and guidance to the field, to address confusion or misinformation. The undersigned groups stand ready to engage in thoughtful dialogue with you and your staff about how to best craft such guidance. Please contact Alison Barkoff, CPSD Policy Advisor (abarkoff@cpr-us.org) or Amanda Lowe, NDRN Senior Public Policy Analyst (amanda.lowe@ndrn.org) with any questions or to follow up on our letter.

Respectfully,

American Civil Liberties Union
American Association of People with Disabilities
American Network of Community Options and Resources
Association of People Supporting Employment First
Association of University Centers on Disabilities
Autism Society of America
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law

² https://www.murray.senate.gov/public/_cache/files/84084732-e011-470a-b246-1cdab87755c3/staff-report-on-employment-for-people-with-disabilities-10-29-2018-pm-pdf

Center for American Progress
Center for Public Representation
Collaboration to Promote Self Determination
Council of Parent Attorneys and Advocates
Council of State Administrators of Vocational Rehabilitation
Disability Rights Education & Defense Fund
National Association of Councils on Developmental Disabilities
National Association of State Directors of Developmental Disabilities Services
National Association of State Directors of Special Education
National Center for Learning Disabilities
National Council on Independent Living
National Disability Institute
National Disability Rights Network
National Down Syndrome Congress
National Federation of the Blind
TASH
The Arc of the United States

Cc: Assistant Secretary Johnny Collett, OSERS
Deputy Assistant Kimberly Richey, OSERS
Senator Lamar Alexander, Chairman, Senate Health, Education, Labor & Pension
(HELP) Committee
Senator Patty Murray, Ranking Member, Senate HELP Committee
Representative Virginia Foxx, Chair, House Committee on Education and the Workforce
(Ed & Workforce)
Representative Robert “Bobby” Scott, Ranking Member, House Ed & Workforce