

July 2, 2015

Mr. David Mank  
Chairman

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Ms. Jennifer Sheehy  
Designated Federal Officer

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Re: National Disability Rights Network (NDRN) Recommendations to the Workforce Innovation and Opportunity Act Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (The Committee)

Dear Mr. Mank and Ms. Sheehy,

NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) Systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP System is the largest provider of legally based advocacy services to people with disabilities in the United States.

One critical area of legally based advocacy performed by the P&As and CAPs is around employment of people with disabilities. A demonstration of the type of work being done by the P&As and CAPs on increasing competitive integrated employment for people with disabilities, can be found in Appendix A of our report, *Beyond Segregated and Exploited- Update on the Employment of People with Disabilities* discussed below.

In our letter dated June 26, 2015 we stated our support for the work of the Committee; as well as highlighted Ruby Moore, Executive Director of Georgia Advocacy Office Inc. and Lisa Pugh of Disability Rights Wisconsin, both are part of our national network. We appreciate the opportunity to offer these comments for the July 2015 meeting of the Committee.

Employment is an issue of critical importance to people with disabilities, and NDRN has released two reports on the topic of segregated and subminimum wage employment. The first in 2011 titled, [Segregated and Exploited – A Call to Action! The Failure of the Disability Service System to Provide Quality Work](#), and a second follow-up report

released in 2012 titled [Beyond Segregated and Exploited – Update on the Employment of People with Disabilities](#). Both reports found a total failure of the disability service system to provide quality work for people with disabilities. The reports strongly criticize the continuation of segregated work and sheltered environments, as well as the low wages paid to people with disabilities, including under the 14(c) program. The reports further highlighted a massive breakdown between good federal and state policies and their implementation and oversight.

The reports also provided recommendations and a summary of activities taken by multiple P&As and CAPs throughout the country. We offer these recommendations to the Committee to assist in its work of strengthening the use of competitive integrated employment for persons with disabilities. Some of these recommendations have been addressed in WIOA, but the implementation and enforcement of these policies need to be addressed. We hope that the work of the Committee will address these concerns. The P&A / CAP Network is currently very involved in employment work and stands ready as an already existing nationwide network system to help implement the suggestions of this Committee to achieve competitive, integrated employment for all people with disabilities.

The importance of the work of this Committee, the need to get implementation of the WIOA correct through strong final regulations, and the importance of the recommendations listed below are best summarized in the following story. An individual had applied for VR services four times in the past decade and was denied each time as “too disabled to benefit from services” based upon information provided by his sheltered workshop employer through the extended evaluation process. For one assessment, the individual; was given a one hour “test” in a segregated setting that involved sorting blocks, which he failed because he was too deliberate in placing the blocks in each assigned box. At another time, VR denied the application after workshop staff commented that the individual finished his work at the workshop too fast and was therefore “disruptive” and not capable of competitive employment. Sheltered workshops have such radically different goals and priorities than competitive employment, and frequently lack appropriate accommodations or assistive technology, which renders information from this system virtually worthless in determining that an individual is too disabled to benefit from VR services.

Happily, however, this individual reapplied for VR services, one week after WIOA went into effect. With the help of the advocacy of Disability Rights Ohio (the Ohio P&A and CAP agency), he was found eligible for VR services after insistence that his counselor prepare a written plan to provide trial work experiences in a realistic setting and with all appropriate supports. He is currently pursuing customized employment in the community for the first time at the age of 33. This individual is excited because he really enjoys cleaning and he has found that is an area where his attention to detail and work speed are an asset! However, the individual would have never reached this point without Disability Rights Ohio advocating for the opportunity to participate in an assessment outside of a segregated setting.

**The following are NDRN's recommendations to the Committee:**

**End Segregated Employment and Subminimum Wage for People with Disabilities  
Congress**

- Restrict all federal money, including Medicaid and Vocational Rehabilitation (VR) funds, from being spent in a segregated or sub-minimum wage employment environment.
- Stop issuing 14(c) certificates that pay sub-minimum wage to individuals with disabilities.
- Forbid in all relevant federal statutes or regulations moving youth or young adults from the classroom to segregated or sub-minimum wage employment environments.
- Modify federal contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

**States**

- Forbid the use of any state funding from being expended in a segregated or sub-minimum wage work environment.
- Modify or discontinue state use contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

**Promote & Facilitate Integrated and Comparable Wage Employment Alternatives**

**Congress**

- Strengthen existing, and create new, incentives through the federal tax code to employ individuals with disabilities in integrated employment environments paying comparable wages.
- Improve and enhance workforce programs such as apprenticeships and on the job training to require greater participation by individuals with disabilities. Place a greater emphasis, as WIOA tries to do, on effective, appropriate transition services so that students are more prepared to enter the workforce upon graduation.
- Increase federal funding to encourage person-centered approaches to vocational planning. Increase federal funding for employment supports to

facilitate supported employment, customized employment, and self-employment.

- Mandate under the Individuals with Disabilities Education Act (IDEA) that transition plans include social skills training components and work preparation, such as placements outside of school in apprenticeship or internship programs.
- Create as part of the reauthorization of the Rehabilitation Act or IDEA a transition coordinator position that will have overall responsibility to coordinate across the education, employment, and disability systems and programs that provide transition services. The number of transition coordinators located at each high school shall be based on the number of students needing transition services at that high school.
- Require state vocational rehabilitation agencies to visit employers employing individuals with disabilities under a sub-minimum wage certificate or which maintain segregated employment environments at least once a year to conduct outreach and inform individuals with disabilities of competitive employment opportunities. This should include an opportunity to complete an application for services to then assess the VR needs of those individuals.
- Require Medicaid to fund services (employment supports, assistive technology, etc.) that will allow individuals with disabilities in segregated or sub-minimum wage employment environments to move to integrated and competitive wage employment.
- Strengthen the Assistive Technology Act by requiring federal programs and agencies that work with individuals with disabilities to provide proper assistive technology which will enhance capability and increase individual productivity.

### **Department of Education**

- Establish new performance indicators by which the performance of state vocational rehabilitation services agencies will be evaluated. The new performance indicators need to include consideration of 1) the number of individuals with disabilities whom the vocational rehabilitation agency assisted to move from non-competitive and/or segregated employment or training environments to competitive and/or integrated employment environments, 2) the number of Individual Education Plan (IEP) transition meetings staff from the vocational rehabilitation agency attended to discuss the transition of a student with a disability from secondary education to the VR agency or to competitive employment, and 3) the number of students with disabilities (eligible for IDEA or covered by Section 504) the VR agency began to serve before the individual exited the secondary education system.

- Ensure that both Rehabilitation Services Administration (RSA) and Office of Special Education Policy (OSEP) utilize their monitoring authority under the Rehabilitation Act and IDEA to monitor programs for compliance and proper procedures as well as issue policy memoranda to ensure compliance with requirements for coordination and collaboration between the VR and special education systems for transition age youth and young adults in each State.
- Ensure that there are appropriate vocational preparation programs available to prepare students with disabilities for competitive employment. This includes ensuring that vocational preparation programs for general education students comply with the IDEA and Section 504 and with student IEPs and 504 plans in admitting students with disabilities and appropriately meeting their needs. Modified vocational preparation programs that will prepare students with disabilities for competitive employment must also be made available for students who cannot benefit from the general vocational preparation program even with appropriate supplemental aids and services.
- Fund longitudinal studies that contain outcome data collected at several intervals after students with disabilities exit high school. The data needs to include at a minimum such variables as employment environment (segregated v. integrated), whether the student's employer holds a sub-minimum wage certificate, the number of hours employed, pay rate, and occupation.
- Provide demonstration project funding to the P&A and CAP Systems focused on transition and employment to provide advocacy for individuals with disabilities to work in integrated employment environments at comparable wages.
- Require eligibility assessments for Vocational Rehabilitation services to take place in realistic work settings in areas that match the individual's abilities and interests rather than in a segregated setting that is inconsistent with the individual's skills. Changing the approach, as demonstrated in the story above, can have a significant impact on the VR eligibility determinations while simultaneously making it more likely that the individual will succeed in competitive, integrated employment.

### **Department of Health and Human Services**

- Issue guidance that, for those individual's receiving Medicaid funded pre-vocational services in a segregated employment environment, an annual two level assessment shall be conducted. Level one shall determine if the individual's current menu of pre-vocational supports could otherwise be provided in a more integrated setting; and level two, if pre-vocational services can only continue in a sheltered setting, what adjustments need to be made to their current services, to better reach the goal of "habilitation services"

which is to “Obtain the adaptive skills necessary to reside successfully in home and community-based settings.”

### **Department of Labor**

- Create and disseminate information to assist providers and businesses in developing best practices for competitive employment consistent with the person’s interests and skills.
- Work with the Office of Personnel Management to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in the federal government.

### **States**

- Adopt Employment First policies that align policies and practices across agencies to fully support competitive integrated employment.
- Increase state funding to encourage person-centered approaches to vocational planning.
- Support proper training of employment personnel and reward agencies for maintaining Certified Employment Support Professionals.
- Enact and implement state policies to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in state government positions.
- Strengthen existing and create new incentives through the state tax code to employ individuals with disabilities in integrated employment environments at comparable wages.
- Require all funding agencies to support Employment First initiatives to help individuals with disabilities find work in integrated employment environments at comparable wages.
- Fund short-term workforce programs, such as apprenticeships and internships, for individuals with disabilities.

### **Increase Labor Protections & Enforcement**

#### **Congress**

- Increase funding, and ensure access, for P&As and CAPs to monitor and investigate violations and abuses in segregated and sub-minimum wage employment environments.

- Increase funding for the Wage and Hour Division to boost enforcement and oversight of wage and hour laws, including the Section 14(c) program.
- Increase penalties for violations of the Section 14(c) program to ensure that employers take their responsibilities seriously.

### **Department of Labor**

- Provide funding to the P&A and CAP Systems focused on monitoring and investigating violations and abuses of sub-minimum wage and segregated employment environment requirements.
- Issue guidance on how to formalize and standardize employee evaluations under a sub-minimum wage certificate, including how to calculate productivity and other factors to determine an individual's wages.
- Require segregated, sheltered, and sub-minimum wage paying employers to report to the Department of Labor yearly the wages, progress, attempts to move to integrated employment environments, and reasons why the individual hasn't moved to integrated employment for each employee.
- Require sub-minimum wage certificate employee evaluations be performed by an independent third party evaluator.
- Place critical information about the sub-minimum wage (14(c)) certificate program on the Department of Labor's website, and ensure it is presented with clarity. Data should be prominently displayed, easily accessible, and include the percentage of employees operating under the certificate, the productivity level of these individuals, salaries of all chief executive officers and management personnel, and the dates for which certificate renewal is required.
- Increase enforcement of federal employment laws and requirements of federal contract work by tasking the Office of Disability Employment Policy (ODEP), the Wage and Hour Division and the Office of Federal Contract Compliance to collaborate and work together.

### **Department of Justice**

- Enforce the integration requirements of Title II of the Americans with Disabilities Act against states that fund segregated and sheltered employment more than integrated employment.

## Equal Employment Opportunity Commission

- Enforce the non-discrimination requirements of the Americans with Disabilities Act against segregated and sheltered employers by forbidding unnecessary segregation.

### Conclusion

The passage of WIOA is a step in the right direction, but there is more that needs to be done. If we are serious about truly making a difference in the move toward full employment of individuals with even the most significant disabilities, then we need to acknowledge that both the VR system and the general workforce system need to be well funded and trained to meet the employment needs of individuals with disabilities. The American Job Centers need to be disability friendly and offer services to all individuals (including those with disabilities) that are seeking employment and require only minimal support such as resume development and job search (not every unemployed person with a disability requires VR services). This action will allow the VR system to focus its limited resources on individuals with the most significant disabilities that require more specialized services, consistent with the statutory priority for VR services. While we have made much progress over the years, there is more to do and NDRN and the P&A and CAP System stand ready to work to implement the recommendations of the Committee.

We look forward to reading the report about this past year of work that the Committee presents to the Secretary of Labor and Congress. Should you have any questions please contact Dara Baldwin, Public Policy Analyst at [dara.baldwin@ndrn.org](mailto:dara.baldwin@ndrn.org) or 202-408-9514 ext. 102.

Respectfully submitted by:



Curt Decker  
Executive Director