




# **Employment Supports Professional Interest Section Meeting**

January 20, 2022

- Welcome
  - Upcoming Events
  - Presentation on Updated RSA FAQ's and Potential Impact on the Industry
  - Employment Retention and Recruitment
  - Section Discussion
- 

### Professional Interest Section Meetings / Professional Development:

- February 10 - Financial Management (10 AM-Noon) / Human Resources (12:30-2:30 PM)
- February 17 - Child & Family Services (10 AM-Noon)
- April 21 - Community Supports (10 AM-Noon) / Employment Supports (12:30-2:30 PM)

### Upcoming Member Forum and Board of Directors Meetings:

- January 28 - Member Forum / Board of Directors Meeting
- February 25 - Member Forum / Board of Directors Meeting
- March 25 - Member Forum / Board of Directors Meeting

Registration for each meeting is available 3 weeks in advance. Recordings and materials will be available on the [INARF Member Portal](#) within 2-3 business days following each meeting.

*Alicia M. Boyd, CPA*  
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## Employment Supports

# **Presentation on Updated RSA FAQ's and Potential Impact on the Industry**

Asher Weaver, Account Executive, Ability Indiana/INARF



RSA Guidance and FAQ's  
Asher Weaver,  
Account Executive Ability Indiana

- History of the RSA Guidance and FAQ's
- Key FAQ's
- How it could impact our Industry
- What is next?

- March 9, 2021
  - Department of Education published [Frequently Asked Questions: Criterion for an Integrated Employment Location in the Definition of “Competitive Integrated Employment” and Participant Choice](#)
  - 30-day notice was given for public comment regarding these FAQ’s. Over 200 different parties provided comments
- The Department of Education took these comments and clarified and provided additional technical assistance and published the final version on October 29, 2021:  
<https://rsa.ed.gov/sites/default/files/2021-10/RSA-FAQ-22-02.docx>



- Before looking at the individual FAQ's here is what was reassessed and given more explanation
- VR's Role- emphasized the role it plays in promoting economic security through employment
  - Added language that states those who pursue non-competitive and non-integrated employment are not eligible for VR services because of how they define employment outcome.

- Q1: What Constitutes Competitive Integrated Employment:
  - Must satisfy three criteria: Wage, Setting, advancement
- Q2: Why is it important to know whether a job position is considered CIE FOR VR?
  - For it to be funded by VR it must meet the definition of CIE
- Q3: What standards must an employment location meet to be considered an integrated employment location for purposes of “competitive integrated employment?”
  - Typically found in the community AND
  - Individuals with disabilities work with and interact with individuals without disabilities at the same extent of individuals employed who do not have disabilities

- Q4. Must an employment location meet both prongs of the criterion to be considered an integrated location for purposes of “competitive integrated employment?”
  - Yes, if it only meets one it would not be considered a VR outcome
- Q5. Is the criterion for an integrated employment location in the regulatory definition of “competitive integrated employment” consistent with the statutory definition?
  - Yes, although not word for word it is still the same definition

- Q6. What is meant by “typically found in the community,” as used in the definition of “competitive integrated employment?”
  - “Found in the competitive labor market; and
  - Not formed for the specific purpose of employing individuals with disabilities”
  - “Therefore, the Department has continued to maintain its long-standing interpretation, consistent with the statutory definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), that employment locations established specifically for the purpose of employing individuals with disabilities (*i.e.*, CRPs) are not “typically found in the community” because such settings are not typically found in the competitive labor market.

- Q7. How does a VR agency know whether a job position in a CRP exists for the purpose of employing individuals with disabilities?
  - “Many CRPs have established businesses within their organizational structures to employ individuals with disabilities. One factor that often signals a distinction between those job positions in a CRP that are “typically found in the community” and those that are not, is whether the job position is open to all applicants regardless of disability status. If a CRP hires individuals with disabilities in job positions to comply with a direct labor-hour ratio of individuals with disabilities required by Federal law”

- Q8. What job positions could be “typically found in the community?”
  - “While OSERS provides some examples here, we make clear they must not be used in lieu of the VR agency’s own case-by-case analysis of whether a job position is “typically found in the community”
- Q9. Why is the level of interaction between individuals with and without disabilities important in determining whether a job position is in an integrated employment location for purposes of “competitive integrated employment?”
  - “The Department maintains its policy that the best measure of integration in an employment setting for individuals with disabilities is to require parity with the integration experienced by workers without disabilities in similar positions.”

- Q10. What level of interaction is needed to satisfy the criterion for an integrated employment location?
  - The regulation at 34 C.F.R. § 361.5(c)(9)(ii)(B) requires the interaction be –
    - For the purpose of performing the duties of the job position;
    - With other employees in the work unit in which the individual with a disability works;
    - With other employees at the entire worksite; and
    - With others, such as vendors and customers, as appropriate.
  - A State VR agency should not consider only the interactions employees with disabilities have with non-disabled customers and vendors. Interactions with customers and vendors at employment locations do not provide the same measure of parity as do the interactions among the employees themselves.
  - The interaction between employees with and without disabilities need not be face-to-face. Employment locations in which individuals telework may meet the standard if employees with disabilities interact with employees of the employer in similar positions and interact with other persons without disabilities to the same extent that employees without disabilities interact with others.

- Q11. What does “for the purpose of performing the job duties” mean with respect to the level of interaction needed for “competitive integrated employment?”
  - Interactions between employees with disabilities and others without disabilities for the “purpose of performing job duties” include those conversations that are necessary, ordinary, and routine when carrying out the functions of the job position
- Q12. What do “work unit” and “worksite” mean, as used in the definition of “competitive integrated employment?”
  - Work Unit: may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer’s organizational structure
  - Work Site: depends on the business operations of the employer, including CRPs and the location or locations where they are performed



- Q13. Do group employment settings, such as janitorial and landscaping crews in which individuals with disabilities earn competitive wages, satisfy the definition of “competitive integrated employment?”
  - In some cases, such settings could potentially meet the definition of “competitive integrated employment,” but they must meet all the required criteria.

- Q14. Is there a standard for the number of individuals with disabilities in comparison to non-disabled individuals at an employment setting that must be met for a job position to satisfy the criterion for an integrated employment location so that it can be considered “competitive integrated employment?”
  - No. OSERS maintains that it is not appropriate for the Department to compare the number of employees with disabilities to the number of individuals without disabilities for purposes of understanding the criterion for an integrated employment location in the definition of “competitive integrated employment.”

- Q15. Is it possible for a VR agency to determine that a job position at an employment location satisfies the definition of “competitive integrated employment,” but another job position at the same location does not?

- Yes, therefore VR agencies should do a case-by-case scenario for each job

- Q16. What factors should a VR agency consider when conducting a case-by-case analysis to determine whether a job position is “competitive integrated employment” for purposes of the VR program?
  - Not limited to but some are:
  - Is the job position open to any qualified applicant or is it limited to applicants with disabilities?
  - Whether a reasonable person observing the ordinary performance of work at an employment setting would consider individuals with disabilities to be segregated from their non-disabled coworker peers, who are doing the same or similar work, while performing their work duties, or would a reasonable person observe employees with disabilities as integrated among and interacting with their non-disabled coworkers while performing their work duties?

- Q17. How does the VR program ensure that individuals with disabilities exercise informed choice in making decisions about services and employment?
  - Going back to guidance released in 2001:
    - That informed choice is a decision-making process that occurs throughout the individual's experience in the VR program. Implementation of informed choice should ensure that individuals, or as appropriate, the individuals through their decision-making supports or representatives -
    - Make decisions related to the assessment process and to selection of the employment outcome and the settings in which employment occurs, vocational rehabilitation services, service providers, the settings for service provision, and the methods for procuring services;
    - Have a range of options from which to make these decisions or, to the extent possible, the opportunity to create new options that will meet the individual's specific rehabilitation needs;
    - Have access to sufficient information about the consequences of choosing various options;
    - Have skills for evaluating the information and for making decisions or, to the extent possible, the opportunity to develop such skills or support and assistance in carrying out these functions; and
    - Make decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests (RSA-PD-01-03, page 4).

- Q18. How can a VR agency help an individual with a disability to exercise informed choice when considering employment?
  - Consistent with sections 102(b)(3)(B) and 102(d) of the Rehabilitation Act (29 U.S.C. §§ 722(b)(3)(B) and 722(d)) and the DOJ Statement, VR agencies are responsible for ensuring that individuals with disabilities have the information necessary to fully understand that they are capable of competitive integrated employment. VR counselors should have a full discussion with individuals about topics that will assist applicants and eligible individuals in making an informed choice regarding the full range of their employment opportunities.

- Q19. Must an individual with a disability choose “competitive integrated employment?”
  - If the individual wants to receive services and supports from the VR program, the individual must choose an “employment outcome,” which means the individual must intend to pursue “competitive integrated employment” or supported employment

- Q20. What must a VR agency do if an individual with a disability makes an informed choice not to pursue an “employment outcome”?
  - At that point, the VR agency must refer the individual with a disability to other community resources that may be able to assist the individual
- Q21. Where may VR services, such as job training or work experiences, be provided?
  - However, because Title I of the Rehabilitation Act and its regulations do not mandate that services be provided in an integrated setting, both the VR counselor and eligible individual could agree that job training or work experiences would be provided in a setting that would otherwise not be considered “competitive integrated employment.”



- Let's open it up for discussion:
  - What questions concern you the most?
  - Have you noticed anything differently?

- INARF signed on to a SourceAmerica letter
- Ability Indiana/SUPRA is continuing to monitor any new developments
- If other questions or concerns arise please let Philip Parnell and Asher Weaver know via e-mail at [Phillip@inarf.org](mailto:Phillip@inarf.org) and [asher@inarf.org](mailto:asher@inarf.org)



Thank you!

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## Employment Supports

# Employment Retention and Recruitment

Lisa Rector, Director of Employment Services, Benchmark Human Services

Jeff Uhey, Director of Operations Child Adult Resource Services, Inc.

Teri King, Director of Human Resources, Child Adult Resource Services, Inc.

Lisa Kendall, Vice President of Human Resources, ADEC, Inc.



# Employment Supports

## **Section Discussion**

INARF Employment Supports Co-Chairs

Your contributions to the INARF PAC are a critical part of INARF's legislative advocacy efforts. They are used to support elected officials who serve as champions of the provider community. Please consider supporting the INARF PAC today.

For more information and to contribute, visit:

[www.INARF.org/INARF-PAC](http://www.INARF.org/INARF-PAC)



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