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OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
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FAQ 22-02

Frequently Asked Questions

Criterion for an Integrated Employment Location
in the Definition of “Competitive Integrated Employment”
and Participant Choice

Overview

The Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for further clarification of the definition of “competitive integrated employment,” particularly with respect to: (1) the criterion for an “integrated employment location” (*i.e.*, the integration standards for the location of the employment) in the definition of “competitive integrated employment” for purposes of the Vocational Rehabilitation (VR) program; and (2) how the criterion for an integrated employment location in the definition affects a VR program participant’s ability to exercise informed choice. The information in these Frequently Asked Questions (FAQs) provides guidance and technical assistance to VR agencies and community rehabilitation programs (CRPs) so they may assist individuals with disabilities to achieve high-quality employment and exercise their informed choice about the type of employment to pursue, either with assistance from the VR program or from other community resources.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person. The key sections of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) and discussed below, include the following: Sections 7(5), 7(11), 7(20)(A), 7(38), 100(a), 102(a), 102(b), 102(d), and 111(a)(1) of the Rehabilitation Act (29 U.S.C. §§ 705(5), 705(11), 705(20)(A), 705(38), 720(a), 722(a), 722(b), 722(d), and 731(a)(1)).

In developing these FAQs, OSERS met with a variety of stakeholders over the past three years to obtain a better understanding of how VR agencies and CRPs have implemented, for purposes of the VR program, the criterion for an integrated employment location in “competitive integrated employment,” as defined at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), and 34 C.F.R. § 361.5(c)(9), and the effect that implementation has had on individual choice. These FAQs respond to many of the concerns we heard during those meetings as well as those raised in written comments submitted to the Department subsequent to publishing its Notice of Proposed Guidance (86 FR 13511 (March 9, 2021)). While these FAQs do not change the Department’s interpretation that has existed since at least the mid-1990s with respect to the criterion for an

integrated employment location, they clarify and update a similar set of FAQs, issued January 17, 2017, entitled [“Frequently Asked Questions: Integrated Location Criteria of the Definition of ‘Competitive Integrated Employment.’”](#)

Therefore, OSERS rescinds the January 2017 FAQs effective as of the date on which these updated FAQs are issued. These updated FAQs will take effect immediately upon issuance and will enable VR program personnel to better carry out the purpose of the VR program and allow individuals with disabilities to maximize their employment potential.

The purpose of the VR program is to assist individuals with disabilities who choose to seek “competitive integrated employment,” including supported employment¹ and customized employment, which constitute an “employment outcome” under the VR program as defined in Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15). By examining potential employment opportunities on a case-by-case basis, and in training and preparing individuals with disabilities for those opportunities that lead to an “employment outcome,” the VR program expands opportunities for individuals with disabilities to achieve high-quality employment and economic security and is a key resource in furthering the full equality and integration of individuals with disabilities in American society.

OSERS recognizes that job opportunities for individuals with disabilities, including individuals with the most significant disabilities, are expanding and becoming more diverse and integrated as the 21st century labor market continues to evolve and respond to the challenges of the COVID-19 pandemic. In furthering its mission, the VR program works with employers of all types, including those offering non-traditional, flexible, and freelance opportunities, to assist and encourage them to fully include individuals with disabilities in their workforce by creating employment opportunities that meet all criteria in the definition of “competitive integrated employment,” including the criterion for an integrated employment location.

We also make clear that nothing in these FAQs is to be interpreted as prohibiting an individual with a disability from exercising informed choice as to the type of work the individual wants to do. However, an individual who chooses to pursue non-competitive and/or non-integrated employment is not eligible for services under the VR program because the individual would not be choosing to achieve an “employment outcome,” as that term is defined for purposes of the VR program at Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15). To the extent an individual with a disability, through their representative as appropriate, chooses to pursue work that is beyond the scope of the VR program, VR agency personnel play a critical role in making the proper referrals to other community resources, as required by 34 C.F.R. § 361.37(b).

¹ “Supported employment,” as defined at Section 7(38) of the Rehabilitation Act (29 U.S.C. § 705(38)) and 34 C.F.R. § 361.5(c)(53), means competitive integrated employment, including customized employment, or employment in an integrated setting in which an individual with a most significant disability is working on a short-term basis toward competitive integrated employment. As such, “supported employment” constitutes an “employment outcome” under the VR program, as that term is defined at Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15).

General Information – Definition and its Connection to the VR Program

Q1. What constitutes “competitive integrated employment?”

To be considered “competitive integrated employment,” a job position must satisfy three criteria related to wages/benefits, integration, and opportunities for advancement (Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9)). Generally, “competitive integrated employment” means full- or part-time work—

- In which the employee with a disability is compensated (including benefits) at a rate of the higher of the Federal, State, or local minimum wage applicable to the place of employment, and not less than the customary rate paid by the employer to employees without disabilities performing the same or similar work and who have similar experience, training, and skills;
- At a location—
 - That is typically found in the community; and
 - Where the individual with a disability interacts, for the purpose of performing the duties of the job position, with other employees within the work unit and at the entire worksite, and, as appropriate for the work performed, with other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (and who are not supervisory personnel or service providers) to the same extent that non-disabled employees interact with these persons; and
- That presents opportunities for advancement for individuals with disabilities that are similar to those available to employees without disabilities in similar positions.

“Competitive integrated employment” also includes work performed by individuals with disabilities who are self-employed.

While all three criteria must be satisfied, these FAQs focus primarily on the criterion for an integrated employment location in the definition. During all of OSERS’ meetings with stakeholders and in reviewing the inquiries received, including written comments submitted to the Department subsequent to publication of its Notice of Proposed Guidance (86 FR 13511 (March 9, 2021)), the integrated employment location criterion has generated the most questions, particularly as it relates to employment offered by CRPs. We address these questions in these FAQs.

Q2. Why is it important to know whether a job position is considered “competitive integrated employment” for purposes of the VR program?

Under Section 100(a)(3) of the Rehabilitation Act (29 U.S.C. 720(a)(3)), a VR program must be carried out in such a way that individuals with disabilities are provided with the opportunity to obtain “competitive integrated employment.” To that end, the Department awards grants to States to carry out the VR program and provide VR services (Section 111(a)(1) of the Rehabilitation Act (29 U.S.C. § 731(a)(1))). An individual with a disability is eligible for the VR program if the individual requires VR services to prepare for, secure, retain, advance in, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (Sections 7(20)(A) and

102(a)(1) of the Rehabilitation Act (29 U.S.C. §§ 705(20)(A) and 722(a)(1))).

For purposes of the VR program, the definition of an “individual with a disability” makes clear that the individual must be able to “benefit in terms of an employment outcome” from the receipt of VR services (Section 7(20)(A)(ii) of the Rehabilitation Act (29 U.S.C. § 705(20)(A)(ii))). An “employment outcome” means, “with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment...(including customized employment, self-employment, telecommuting, or business ownership), or supported employment...that is consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice” (34 C.F.R. § 361.5(c)(15); *see also* Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11))).

Therefore, to be eligible for the VR program, an individual with a disability must intend to achieve an “employment outcome,” as that term is defined (34 C.F.R. § 361.42(a)(4)). This requirement is consistent with the statutory requirements governing the mandatory components of the individualized plan for employment (IPE), which is developed once an applicant is determined eligible for the VR program and provides the approved agreement for the relationship that exists between the VR agency and the eligible individual with a disability.

Pursuant to Section 102(b)(4) of the Rehabilitation Act (29 U.S.C. § 722(b)(4)), the IPE must contain, among other things, a description of the eligible individual’s employment outcome that is consistent with the general goal of “competitive integrated employment” and the VR services needed by the individual to achieve that employment outcome.

Because of the heightened emphasis on “competitive integrated employment” throughout Title I of the Rehabilitation Act — from the provisions on the purpose and policy of the VR program to requirements governing eligibility determination and IPE development — it is essential that the VR agency determine whether a job position that an individual with a disability chooses to pursue would be considered “competitive integrated employment.” The VR agency must make this determination on a case-by-case basis, as described in more detail in the response to Q18.

Criterion for an Integrated Employment Location – Overview

Q3. What standards must an employment location meet to be considered an integrated employment location for purposes of “competitive integrated employment?”

With respect to an employment outcome for purposes of the VR program, under 34 C.F.R. §§ 361.5(c)(9)(ii) and 361.5(c)(32)(ii), to be considered integrated, an employment location must be—

- Typically found in the community; and
- 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 worksite, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable

positions interact with these persons.

Q4. Must an employment location meet both prongs of the criterion to be considered an integrated location for purposes of “competitive integrated employment?”

Yes. The regulatory definition at 34 C.F.R. § 361.5(c)(9)(ii) uses the word “and” to connect the two requirements. Therefore, if a job position in a location satisfies only one of the two prongs of the criterion for an integrated employment location, the job would not meet the definition of “competitive integrated employment” for purposes of the VR program and, thus, would not be an employment outcome under the program.

Q5. Is the criterion for an integrated employment location in the regulatory definition of “competitive integrated employment” consistent with the statutory definition?

Yes. Although the criterion for an integrated employment location in the regulatory definition of “competitive integrated employment” at 34 C.F.R. § 361.5(c)(9)(ii) is not word-for-word the same as the statutory definition at Section 7(5)(B) of the Rehabilitation Act (29 U.S.C. § 705(5)(B)), it is consistent.

The statutory definition of “competitive integrated employment” in Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), for the most part, incorporates the prior regulatory definition of “integrated setting” as the criterion for an integrated employment location. The regulatory definition of an “integrated setting” and its standards have existed in the VR program regulations since at least 1997 (62 FR 6308, 6337-6338 (February 11, 1997)), and are consistent with the Rehabilitation Act’s heightened emphasis on ensuring individuals with disabilities are afforded maximum opportunities to engage in training and achieve competitive employment in integrated settings. The Rehabilitation Act as amended by WIOA does not alter the scope of the criterion for an integrated setting that has existed in Department regulations since the term was first defined. Therefore, the definition of “competitive integrated employment” in 34 C.F.R. § 361.5(c)(9)(ii), while not verbatim, is consistent with the definition of the term at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), prior regulations, and long-standing Department policy. See also 81 FR 55630, 55641 (Aug. 19, 2016). Finally, the definition is also consistent with the “Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*,” dated June 22, 2011 and updated February 25, 2020 (DOJ Statement), regarding what constitutes the “most integrated setting”² for purposes of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (527 U.S. 581 (1999)). On page 2 of the Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (https://www.ada.gov/olmstead/q&a_olmstead.htm), the Department of Justice writes:

The “most integrated setting” is defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”³

Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without

² 28 C.F.R. part 35.

³ *Id.* at Appendix (2010).

disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; afford individuals choice in their daily life activities; and provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings. By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.

Standard for "Typically Found in the Community"

Q6. What is meant by "typically found in the community," as used in the definition of "competitive integrated employment?"

To be "typically found in the community," as used in the regulatory definition of "competitive integrated employment" at 34 C.F.R. § 361.5(c)(9), an employment location setting should be—

- Found in the competitive labor market; and
- Not formed for the specific purpose of employing individuals with disabilities (62 FR at 6310-6311 and 81 FR at 55642-55643).

The Department's long-standing policy dates back to the mid-1990s (62 FR at 6310-6311 and 81 FR at 55642) and is consistent with the Rehabilitation Act, as amended by WIOA, as well as with prior legislative history. Specifically, the term integrated setting "is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with coworkers who do not have disabilities; and where workers with disabilities are not congregated . . ." (Senate Report 105-166, page 10, March 2, 1998). 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)⁴ are not "typically found in the community" because such settings are not typically found in the competitive labor market. This is the first prong of the criterion for an integrated employment location that must be satisfied for a job

⁴ In *Baltimore Goodwill Industries Inc. v. NLRB*, 134 F.3d 227 (4th Cir., 1998), the Court analyzed whether an individual with a disability who worked at a Baltimore Goodwill facility was an "employee" for purposes of the National Labor Relations Act, and that analysis is consistent with the Department's long-standing policy of what is meant by "typically found in the community" for purposes of competitive integrated employment under the VR program. In that decision, the Court focused its analysis on five factors to determine whether the employment setting was industrial in nature or rehabilitative in nature: discipline, competitive placement, productivity standards, counseling, and other terms and conditions of employment. The Court found that when an employment setting is rehabilitative in nature, the individual with a disability is not an employee for purposes of the National Labor Relations Act (*Id.* at 231). Although the Department believes the Court's standards are consistent with the Department's long-standing policy, the Department does not adopt these factors in these FAQs.

position to meet the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. 705(5)) and 34 C.F.R. § 361.5(c)(9) (81 FR at 55642-55643).

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 (*i.e.*, the Javits–Wagner–O'Day Act (JWOD Act), 41 U.S.C. § 46 et seq), the job positions likely are not considered “typically found in the community” (81 FR at 55643). This is distinct from businesses or employers that affirmatively seek to hire individuals with disabilities and whose job positions are open to all applicants regardless of disability status. See Q8 for more detail.

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”; that analysis is based on the unique facts of the particular job position at issue. The examples provided below, though not exhaustive, are job positions that are likely to be considered “typically found in the community”:

- Job positions in CRPs, such as job coaches, that are designed to provide services to others, even if those other persons are also individuals with disabilities (81 FR at 55643);
- Management staff and administrative staff employed by CRPs not subject to ratio requirements (*i.e.*, those staff who supervise and support the CRP’s “direct labor workers”); and
- Job positions that are open to any qualified applicant regardless of disability status.

We clarify that centers for independent living (CIL), protection and advocacy (P&A) programs, and other similar entities (*i.e.*, entities that are not CRPs) serving individuals with disabilities that affirmatively hire and promote individuals with disabilities are “typically found in the community” and, thus, integrated locations. Unlike CRPs, whose primary purpose is to rehabilitate individuals with disabilities, CILs and P&As are formed to meet the unique needs of individuals with disabilities (*i.e.*, to provide independent living and advocacy services), not for the specific purpose of employing them (*see generally* 81 FR at 55643), and their hiring practices help to ensure that individuals with the subject matter expertise and skills are available when serving or advocating on behalf of individuals with disabilities. Similarly, disability-owned businesses, like minority- or women-owned businesses that affirmatively hire and promote individuals with disabilities but that are not CRPs, as well as Federal agencies that exercise affirmative hiring authorities for their positions, represent jobs that are “typically found in the community.” The act of affirmatively hiring individuals with disabilities to ensure the availability of employees with sufficient knowledge, skills, and expertise to meet the needs of

those they serve can be distinguished from a CRP that is established, by Federal law, for the purpose of hiring individuals with disabilities with a requirement that its direct labor workforce includes a certain percentage of individuals with disabilities. See Q16 for a more detailed discussion of the criteria to consider when conducting the case-by-case analysis, including of job opportunities at a CRP.

Standard for Interaction in the Work Unit and Worksite

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. Consequently, the regulations establish a standard of integration with respect to employment outcomes that ensures the same level of interaction by individuals with disabilities with non-disabled persons as that experienced by workers without disabilities in the same or similar jobs (62 FR at 6311 and 81 FR at 55642-55645). For this reason, this standard must also be met in order for a job position to be considered in an integrated employment location and, thus, “competitive integrated employment.”

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.

These standards help to ensure parity in the level of interaction between employees with disabilities and non-disabled employees.

In determining whether a particular job position, particularly in a CRP, satisfies the above interaction requirements and may be considered an integrated employment location, the VR agency must consider whether the employee with a disability interacts with non-disabled persons to the same extent that a non-disabled employee who performs the same work at the same employment location interacts with other individuals. For this reason, it is important to start a case-by-case analysis by looking at the specific work unit in which the individual with a disability is or will be working (*e.g.*, the team, crew, or division within an office). Because of the ability to easily compare interactions between employees with and without disabilities to the interactions between non-disabled workers and all others in the work unit, the level of interaction at the work unit level is a good measure for the VR agency to use in determining whether parity exists for employees with disabilities as compared to their colleagues without disabilities.

Similarly, the level of interaction across the entire worksite (and not just the individual work unit) provides another valuable indicator of parity with respect to interaction between employees with and without disabilities as compared to the interactions between non-disabled workers and others at the worksite. As required by 34 C.F.R. § 361.5(c)(9)(ii)(B), employees with disabilities must be able to interact with non-disabled persons at the entire worksite to the same extent that a non-disabled worker performing the same or similar work would interact with others.

While interactions between employees with disabilities and non-disabled customers and vendors are important, these interactions should not be the sole criterion used to determine whether a job position is an integrated employment location. In other words, when conducting a case-by-case analysis, 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. Specifically, it is possible for employees with disabilities to interact with customers and vendors while also being segregated from, and having little or no interaction with, non-disabled coworkers performing the same job duties at the same employment location. Such an outcome is not intended when implementing the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)). Therefore, when promulgating regulations in 2016, we emphasized the comparison of interactions between employees with and without disabilities at the work unit and worksite levels at 34 C.F.R. § 361.5(c)(9)(ii)(B) (81 FR at 55644-55645).

Finally, the Department has long held that telework opportunities may satisfy the interaction standard and be considered to take place in integrated locations, so long as all other criteria are met (62 FR at 6311 and 81 FR at 55644). 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. This also is true for flexible and freelance work opportunities available in today’s economy. A growing number of telework options have been offered to American workers as a result of the COVID-19 pandemic and many may continue to be available following the pandemic. These telework options could be beneficial to individuals with disabilities and expand their opportunities for “competitive integrated employment.”

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 (*i.e.*, those interactions specific to the performance of the job duties (81 FR at 55644)). Some examples could include—

- With respect to others in the employee’s work unit, collaborating on next steps for a joint project or asking for assistance to solve a problem raised by a customer;
- With respect to others at the worksite, obtaining clarification from management about a new policy decision or obtaining assistance from human resources about a personnel

- matter; and
- With respect to customers and vendors, placing or receiving an order for delivery or assisting a customer in making a purchase.

OSERS maintains that these interactions, for purposes of a case-by-case analysis conducted by the VR agency, should not take into consideration casual and social conversations between individuals with disabilities and non-disabled persons at the workplace (*e.g.*, those conversations that occur in the hallways and lunchroom when the employees are not performing work duties) (81 FR at 55644). While casual conversations are to be expected at any workplace, such conversations are not indicative of the parity of interaction intended in Section 7(5)(B) of the Rehabilitation Act (29 U.S.C. § 705(5)(B)). For this reason, as the Department has stated in the past, the best measure of whether an employment setting is integrated is based on the level of interaction that occurs between employees with disabilities and non-disabled persons during the performance of job duties as compared to the interactions that occur between non-disabled workers performing the same or similar work and others (62 FR at 6311 and 81 FR 55644-55645).

Q12. What do “work unit” and “worksite” mean, as used in the definition of “competitive integrated employment?”

Work Unit: As used in the regulatory definition of “competitive integrated employment” at 34 C.F.R. § 361.5(c)(9)(ii)(B), “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 (81 FR at 55643). For example, a work unit could be a team, crew, division in an office, or, depending on the organizational structure of the employer, the entire office. In other words, the work unit refers to those individuals with whom an employee works most closely during the course of performing his or her work duties.

Worksite: The worksite, as used in the standards at 34 C.F.R. § 361.5(c)(9)(ii)(B), depends on the business operations of the employer, including CRPs and the location or locations where they are performed. In general, the term refers to the broader location in which the work unit, as described above, performs its work (*e.g.*, the entire warehouse or office building).

Use of the terms “work unit” and “worksite” in the regulation focuses on the consideration of the interaction of employees with and without disabilities in the particular job position, and the environment in which the work is performed. This focus in these criteria ensures parity exists with respect to the levels of interaction (*i.e.*, with respect to interactions necessary for the performance of job duties, not casual conversation) between employees with disabilities and non-disabled persons in both the work unit and throughout the entire worksite, as compared to the interaction that non-disabled employees have with their non-disabled coworker peers in their work unit and throughout the entire worksite (81 FR at 55644-55645). For example, the level of integration experienced by all individuals with disabilities employed by a CRP is not the same and is dependent on the circumstances of the particular job position within each work unit and worksite of the organization.

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. VR agencies must determine if any job positions, including those in mobile work units such as janitorial and landscaping crews, satisfy all criteria set forth at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9). As noted in the response to Q1, only those job positions that satisfy all three criteria related to wages/benefits, integrated employment location, and opportunities for advancement would be considered “competitive integrated employment.”

In conducting its case-by-case analysis of the job position within a setting such as a janitorial or landscaping crew, VR agencies must—

- Determine whether the employee with a disability is compensated at not less than the Federal, State, or local minimum wage (whichever is applicable) and at the customary rate (including benefits) paid to non-disabled workers performing the same or similar work for the same employer and is afforded the same opportunities for advancement as his or her non-disabled coworker peers;
- Determine whether the job position on that janitorial or landscaping crew is “typically found in the community,” meaning one that is not formed for the purpose of employing individuals with disabilities, as described in more detail in Q6; and
- Analyze the parity in interaction experienced by the employee with a disability with his or her non-disabled coworkers in the work unit and at the worksite, as well as with customers and vendors as appropriate, as compared to the same level of interaction experienced by non-disabled workers performing the same or similar work with others (see Q10 through Q12). In analyzing the parity in the interaction experienced by employees with disabilities in mobile crews, VR agencies should not take into account the casual conversations these individuals have with members of the public working in or visiting the worksite. As noted in response to Q11, the parity in the level of interaction at both the worksite and work unit levels is based on the interaction that employees with disabilities have with their non-disabled coworkers as they perform their job duties, as compared to the level of interaction that their non-disabled coworkers have with other non-disabled coworkers when performing their job functions.

To the extent that an organization divides its crews or enclaves on the basis of disability status so that crews are comprised primarily of persons with disabilities or entirely of non-disabled persons, such that persons with disabilities would not have regular interactions, while performing their job duties, with non-disabled persons at either the worksite or work unit levels, such crews or enclaves would not be considered “competitive integrated employment,” as defined at 34 C.F.R. § 361.5(c)(9). Interaction with program staff and/or staff supervisors does not constitute “regular interactions” with non-disabled persons for purposes of the definition of “competitive integrated employment.” See also Q16 for a more detailed discussion about the case-by-case analysis VR agencies must conduct to determine whether a job position satisfies the definition of “competitive integrated employment.”

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.” Since “integrated setting” was first defined in VR program regulations in 1997, we have considered how best to capture, in the definition’s criteria, the intent of the statute and long-standing Department policy. In doing so, we considered whether to establish a numerical standard and rejected that as impractical and unworkable. Given the many and varied types of employment settings in today’s economy, we cannot determine a single standard that could be used to satisfactorily determine the level of interaction required to meet the intent underlying the definition. Rather than use a numerical standard as the measure, an “integrated setting” is best viewed in light of the quality of the interaction among employees with disabilities and persons without disabilities, when compared to that of employees without disabilities in similar positions with other persons (81 FR at 55643). The inability to identify a numerical standard that would signify that a position is in an integrated employment location is distinct from the reference in Q7 to businesses that are required by Federal law (*i.e.*, the JWOD Act) to meet a direct labor-hour ratio requirement. As explained in response to Q7, the latter is a factor to be considered in determining if a particular employment location is typically found in the community and may be in an integrated location if all other requirements of the criterion are satisfied.

Case-by-Case Analysis

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. In conducting a case-by-case analysis, as described in more detail in response to Q16, the VR agency could determine that one or more job positions for individuals with disabilities, including those in a CRP, meet the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9), while other job positions do not. Therefore, a VR agency should conduct a case-by-case analysis for each job position and should not generalize the analysis across an entire employment location or business.

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?

The VR agency must determine whether a job position satisfies the criteria of “competitive integrated employment.” In response to Q7, Q11, and Q12, we provide some factors that a VR agency should consider when determining, on a case-by-case basis, whether a job position, particularly in a CRP, is typically found in the community, whether the interaction with others for that job position is for the purpose of performing the job duties, and whether parity exists with respect to the interaction between employees with disabilities and non-disabled individuals

as compared to non-disabled workers performing the same or similar work at the work unit and the entire worksite, and with customers and vendors as appropriate. The VR agency must apply the criteria of the definition equally to any position (81 FR at 55642). In addition to those criteria, the VR agency may find the following considerations helpful in conducting its case-by-case analysis, particularly when the job position is with a CRP:

- 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?

The above considerations are not the only factors that VR agencies may use in making the case-by-case analysis. The most important considerations, however, will be those that are unique to the job position at issue and which the VR agency will observe while onsite or will know from other information.

Informed Choice

Q17. How does the VR program ensure that individuals with disabilities exercise informed choice in making decisions about services and employment?

Section 100(a)(3)(C) of the Rehabilitation Act (29 U.S.C. § 720(a)(3)(C)) makes clear that the VR program be carried out in a manner that enables applicants and eligible individuals to be “active and full partners” in the VR process, so they may make “meaningful and informed choices” regarding, for example, the services received and the employment outcome to be achieved. Section 102(d) of the Rehabilitation Act (29 U.S.C. § 722(d)) and 34 C.F.R. § 361.52 implement this policy by requiring a VR agency to have policies and procedures in place that ensure each applicant and eligible individual is provided the necessary information and support services to exercise informed choice throughout the entire VR process, including decisions regarding employment goals.

It has been the Department’s long-standing policy, as stated in RSA-Policy Directive (PD)-01-03 (<https://rsa.ed.gov/sites/default/files/subregulatory/pd-01-03.pdf> (Jan. 17, 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).

VR agencies are responsible for facilitating the development of information resources, tools, and support services needed by individuals and counselors to fully implement informed choice. VR agencies must provide the information in accessible formats or modes of communication that individuals can understand. The VR agency also has a responsibility to develop or make available a variety of resources to assist individuals in planning, problem solving, and building decision-making skills (*Id.* at pages 4 and 6). This may include identifying resources to help individuals form a supported decision-making team.

See Q20 for a discussion of the steps the VR agency must take when an individual with a disability chooses to pursue work other than “competitive integrated employment.”

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. For example, consistent with the requirements in 34 C.F.R. §§ 361.37(b), 361.42(a), and 361.52, such topics include —

- The purpose of the VR program;
- The benefits of working in “competitive integrated employment;”
- The role the VR program can play in assisting individuals with disabilities in achieving “competitive integrated employment” with reasonable accommodations and appropriate services and supports, including supported employment services and customized employment services;
- The effect working could have on the receipt of any State or Federal means-tested benefits, such as Social Security Administration (SSA) benefits, Medicaid, and federally assisted housing benefits, delivered by persons qualified or experienced in providing such benefits counseling; and
- The effect a choice not to pursue “competitive integrated employment” will have on the individual's eligibility for, and receipt of, VR services (see also RSA-PD-01-03).

The DOJ Statement also makes clear that title II of the Americans with Disabilities Act and its integration mandate impose an affirmative duty on a public agency to guard against segregation by ensuring opportunities for individuals with disabilities to make an informed choice:

Public entities must take affirmative steps to remedy this history of segregation and prejudice in order to ensure that individuals have an opportunity to make an informed choice. Such steps include providing information about the benefits of integrated settings; facilitating visits or other experiences in such settings; and offering opportunities to meet with other individuals with disabilities who are living, working, and receiving services in integrated settings, with their families, and with community providers. Public entities also must make reasonable efforts to identify and address any concerns or objections raised by the individual or another relevant decision-maker (https://www.ada.gov/olmstead/q&a_olmstead.htm, page 3).

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 (see section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15)). We emphasize that, while there are a variety of employment types currently available for individuals with disabilities to choose from based on their individual preferences, only “competitive integrated employment” and supported employment are allowable employment outcomes for purposes of the VR program. Thus, any VR funding must support activities related to pursuing these allowable employment outcomes. The requirements at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9) establish minimum requirements that a job position must satisfy to be considered “competitive integrated employment.” However, these requirements must not be construed as limiting an individual with a disability’s choice as to the type of employment the individual chooses to pursue. Instead, when explained, these requirements help to inform the individual of the purpose of the VR program and the types of employment outcomes available through the program that will maximize the individual’s potential for “competitive integrated employment.” With this understanding and other information acquired through the informed choice process described in response to Q17 and Q18, the individual can choose to pursue “competitive integrated employment” with the assistance of the VR program or other forms of employment with the support of other Federal, State, or local programs designed to meet those needs.

Referrals and Training

Q20. What must a VR agency do if an individual with a disability makes an informed choice not to pursue an “employment outcome”?

When an individual with a disability makes an informed choice not to pursue an “employment outcome (*i.e.*, “competitive integrated employment” or supported employment), the VR counselor must make a determination that the individual is either not eligible (if they are an applicant) or no longer eligible (if they were previously determined eligible) for the VR program, in accordance with Section 102(a) of the Rehabilitation Act (29 U.S.C. § 722(a)) and 34 C.F.R. § 361.42. 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, as required by 34 C.F.R. § 361.37(b). Before making the referral, the VR agency must—

- Explain to the individual that the VR program is designed to assist individuals with disabilities to achieve employment outcomes, as that term is defined at Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15) (34 C.F.R. § 361.37(b)(1));
- Provide information regarding availability of employment options and VR services to assist the individual to achieve an employment outcome under the VR program, consistent with 34 C.F.R. § 361.52 (34 C.F.R. § 361.37(b)(2));
- Inform the individual that services can be provided in an extended (or non-integrated) setting, if necessary, for training or preparing for an employment outcome in an integrated setting (34 C.F.R. § 361.37(b)(3));
- Inform the individual with a disability that he or she can reapply to the VR program at a later date to pursue a job position that would be considered an “employment outcome” under the VR program (34 C.F.R. § 361.37(b)(4)); and
- Refer the individual with a disability to SSA so he or she can receive information about receipt of SSA benefits while working (34 C.F.R. § 361.37(b)(5)).

In making a referral consistent with 34 C.F.R. § 361.37(c), the VR agency must—

- Refer the individual with a disability to other Federal and State programs, including workforce development programs, better suited to assist the individual in achieving the chosen employment goal; and
- Provide the individual—
 - A notice of the referral;
 - Specific information for a contact at the referral agency or program; and
 - Information and advice about the services best suited to assist the individual to prepare for or obtain employment.

Q21. Where may VR services, such as job training or work experiences, be provided?

A VR agency may provide services, such as job training or work experiences,⁵ to an eligible individual if such services are needed to achieve an employment outcome under the VR program and the services are listed on the individual’s IPE. The VR counselor and eligible individual must agree on the providers of those services, in accordance with Sections 102(b) and (d) of the Rehabilitation Act (29 U.S.C. §§ 722(b) and 722(d)). In discussing available service providers with individuals with disabilities, it is important to note that the DOJ Statement says that the “Title II regulations require public entities to ‘administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities’” (page 1).⁶ Job training or work experiences provided to assist VR program participants to achieve their employment goals may benefit them when provided in integrated settings in competitive integrated work environments.

⁵ The job services and work experiences described here, for purposes of Q21, are to be distinguished from trial work experiences provided to applicants to the VR program pursuant to section 102(a)(1)(B) of the Rehabilitation Act and work-based learning experiences provided to students with disabilities as a pre-employment transition service pursuant to section 113(b)(2) of the Rehabilitation Act. Unlike job training and work experiences provided under an IPE, the Rehabilitation Act requires that trial work experiences and work-based learning experiences in both of these contexts be provided, to the maximum extent possible, in integrated settings (see also section 7(2)(B)(v) of the Rehabilitation Act (29 U.S.C. § 705(2)(B)(v)); and 34 C.F.R. §§ 361.42(e)(2)(ii) and 361.48(a)(2)(ii)).

⁶ 28 C.F.R. § 35.130(d)

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.” Nothing in Title I of the Rehabilitation Act or its implementing regulations prohibits an individual from receiving VR services, including job training or work experience, in a non-integrated setting. In fact, before a VR counselor refers an individual with a disability to another community resource because he or she has made an informed choice not to achieve an “employment outcome” (*i.e.*, “competitive integrated employment” or supported employment) under the VR program, the VR counselor must inform the individual that VR services may be provided in a non-integrated setting if necessary to prepare for employment in an integrated setting (34 C.F.R. § 361.37(b)(3)).

It is important to note, however, that these opportunities must be treated as training opportunities (*e.g.*, be time limited) that will lead to an “employment outcome” under the VR program, as that term is defined at Section 7(11) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(15). If such an outcome is not the intended choice of the individual, the VR agency must determine the individual as ineligible for the VR program and refer them to other community resources. If an individual is not eligible for the VR program, the VR agency must assist the individual in identifying other sources, such as CRPs or employers, that work with individuals who choose not to seek “competitive integrated employment” by providing needed job training or work experiences, as well as job accommodations.