



April 24, 2017

Kylee Hope, Director DDRS
Theresa Koleszar, Director BRS
c/o Kathy Sodeman
Bureau of Rehabilitation Services
402 West Washington St., Room W453
Indianapolis, IN 46204

Re: Amendment to Vocational Rehabilitation Services Section of the
2017 Workforce Innovation and Opportunity Act (WIOA) Unified
State Plan to Implement an Order of Selection

Dear Directors Hope and Koleszar,

Thank you for the opportunity to submit public comments on the proposed Vocational Rehabilitation (VR) amendment to the WIOA Unified State Plan to implement order of selection. Indiana Disability Rights is an independent state agency that advocates for and protects the rights of individuals with disabilities. As the designated entity to administer the federally-funded Client Assistance Program (CAP) within the State, advocating for those seeking or receiving VR services is one of our agency's responsibilities. Pursuant to that responsibility, Indiana Disability Rights (IDR) has reviewed the proposed amendments to the 2017 Unified State Plan and offers the following comments.

REASON FOR AMENDMENT IS NOT JUSTIFIED: We understand that a State VR agency is required to implement an order of selection when it anticipates insufficient personnel and/or fiscal resources to fully serve all eligible individuals. Under the current funding model approved by the Indiana General Assembly, projections indicate a shortage of fiscal resources beginning in FFY17 and continuing through FFY18.

Equality Through Advocacy

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We believe that this amendment is not justified at this time. The Indiana General Assembly provides a mechanism whereby state agencies may request an increase to their budgets. There is no indication that the Family & Social Services Administration (FSSA), the larger agency in which VR is embedded, has made the request to increase state funding to cover the projected deficit. Until such time as the Indiana General Assembly rejects a requested increase, this option remains available to the agency. Failure of the agency to request a funding increase and allow the Indiana General Assembly to address the projected deficit should not result in loss of services to eligible individuals. It should be noted that the 120th Indiana General Assembly passed SB 390, the Indiana Employment First Act unanimously. The Act states:

Sec. 7. (a) It is the policy of the state to advance competitive integrated employment, including self-employment, as the first and preferred option when providing services to an individual with disabilities who is of working age, regardless of the nature or the severity of the individual's disability. The policy applies to programs and agencies that provide services and support to help obtain employment for individuals with disabilities.

The federal budget for Indiana, through the Rehabilitation Services Administration (RSA), provides a funding match for state VR activities. On August 10, 2016, Indiana reverted \$14.5 million back to RSA because the necessary state funding was not provided. The required 20% state match was less than \$3 million. In total, VR could have had an additional \$18 million to continue serving people with disabilities. We believe that until all remedies to increase funding have been exhausted, including allowing the Indiana General Assembly to have the opportunity to decide whether to increase funding in order to further the policies of the state, the agency is not exercising its due diligence to ensure Hoosiers with disabilities have every opportunity to obtain competitive, integrated employment.



ORDER OF SELECTION IS IN DIRECT CONFLICT TO THE GOVERNOR'S PILLAR TO STRENGTHEN INDIANA'S WORKFORCE: Pursuant to 460 IAC 14-9, the director of the Bureau of Rehabilitation Services (BRS) has the sole authority to implement order of selection. However, as a civil servant in an executive agency, the director also has an obligation to the citizens of Indiana to take all steps necessary to ensure VR is in compliance with the direction of State leadership. BRS's implementation of an order of selection appears to directly contradict Governor Holcomb's stance on strengthening the workforce and improving the economy for Hoosiers and, instead, risks leaving thousands of individuals without needed employment services.

Although not open for comment at this time, it is the opinion of IDR that leaving sole authority to one director to implement order of selection is not a prudent regulation. Oversight and approval from the executive leadership of FSSA should be a necessary step before this decision is made. The direct conflict with both the Indiana Employment First Act's clearly stated policies and Governor Holcomb's Pillars, indicate that higher level executive leadership needs to be involved in this decision.

LACK OF NECESSARY DETAILS FOR IMPLEMENTATION:

Functional capacities undefined: The director of BRS also has sole authority to determine the priority categories for services under order of selection. The three priority categories that have been proposed are based off determinations of functional capacity of the individual. However, the functional capacities listed in 460 IAC 14-8-2 are left undefined and it will be the VR counselors making the priority determinations for order of selection. While leaving the functional capacities undefined may have been acceptable when all eligible applicants receive services, in light of the need to place individuals in classifications, the seven functional capacities must be defined and VR counselors appropriately trained to ensure consistent interpretations across VR offices are applied.

Lack of training plan: The published proposal states, "Although training is incredibly important, BRS has prioritized trainings and will reduce training costs beginning in FFY17." This statement, along with the lack of a clearly defined training plan in the proposal, is problematic. When VR counselors are tasked



with placing individuals in the appropriate priority category for service, they will need to be thoroughly trained and provided with the necessary tools to make the appropriate determination. With the implementation scheduled to begin on July 1, 2017, this only allows for 60 days for the development of training materials and the provision of training to VR counselors.

IDR, the designated entity for the Client Assistance Program (CAP), anticipates an increase in the number of appeals by individuals placed in the incorrect priority category by VR counselors. Without clearly defined terms and proper training for VR counselors, it is a strong possibility that the increase in appeals and lack of clarity on these issues will result in valuable time and resources by FSSA Administrative Law Judges (ALJs) being diverted to handling an increase of appeals. While IDR stands ready, through the CAP program, to provide representation to individuals who are wrongfully denied service or are placed in the incorrect priority category, the decrease of FSSA ALJs from five to two make it difficult to envision the ability of administrative deadlines being met.

Readiness of referral agencies: The proposed amendment states that “BRS has been in communication with core WIOA partners at the Department of Workforce Development (DWD) regarding strategies to enhance access to WorkOne services by individuals with disabilities who may be unable to receive services from VR.” However, there is no indication that DWD has communicated the impact of order of selection on the WorkOne centers throughout Indiana nor that it is taking steps to provide training to employees at those centers on how to work with individuals with disabilities. Considering the statement in the proposal indicating that newly hired VR counselors could take 18 months to learn all aspects of the job, it is difficult to see how appropriate and effective training to all WorkOne centers will be delivered by July 1, 2017.

For the aforementioned reasons, Indiana Disability Rights supports the delay of the implementation of an order of selection until the Indiana General Assembly and Office of the Governor have the opportunity to provide a possible solution to the fiscal issues and potential loss of services. Should order of selection still be deemed necessary, advance input from stakeholders, advocacy groups, and the



Client Assistance Program (CAP) should be sought. Detailed implementation plans should be developed and training should be conducted for both the VR counselors and the WorkOne centers.

Thank you for your consideration of my comments. I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Dawn M. Adams". The signature is written in a cursive, flowing style.

Dawn M. Adams, J.D.
Executive Director

cc: Office of the Governor of Indiana
Director Walthall, FSSA Agency Head