

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Wednesday, October 29, 2014

Time: 10:30 am – 2:30pm

Location: 3195 Neil Armstrong Blvd, Eagan, MN 55121

Chair: John Sherman, VRS Extended Employment Program Director

Facilitator: Holly Johnson, Lanterna Consulting, Inc. contracted through Management Analysis & Development, Minnesota Management and Budget

Advisory members (or alternates) in attendance: *Jeff Bangsberg, Tim Dickie, Steve Ditschler, Jeremy Gurney, Tim Hammond, Nancy Huizenga, Holly Johnson, Karen Johnston, Anita Kavitz, Wendy Keller, Don Lavin, Clayton Liend, Kim Peck, Rod Pederson, Dean Ritzman, John Sherman, and David Sherwood-Gabrielson*

Guests: *Jan Thompson*

Welcome and Overview of Agenda

The meeting was called to order. The facilitator provided a brief overview of the meeting objectives and agenda. The advisory was asked to provide any edits for the October 8, 2014 session notes by October 31, 2014 after which time the notes would be finalized.

Updates since last Advisory Working Session

John Sherman provided updates on EE Rule Revision work since the last advisory meeting on October 8, 2014. John then asked David Sherwood-Gabrielson to provide a brief overview of the Minnesota Employment First Policy which was adopted by the Olmstead Subcabinet on September 29, 2014. Per the policy, *'Employment First means raising the expectation that all working age Minnesotans with disabilities can work, want to work, and can achieve competitive integrated employment; and each person will be offered the opportunity to work and earn a competitive wage before being offered other supports and services.'* David and John stated the vision of the policy has direct connections to the EE Rule revision focus on helping all people with disabilities achieve competitive, integrated employment.

In its 'Introduction' section, the policy states: *"The State of Minnesota is committed that all Minnesotans including those with disabilities have a wide range of employment opportunities within the general workforce. The Minnesota Employment First Policy guides state agencies in their planning, decision making, implementation, and evaluation of services and supports for Minnesotans with disabilities to make employment the first and expected option considered. The Minnesota Employment First Policy provides state agencies with:*

- *A clear statewide vision supporting transformational change and a long-range goal of working-age youth and adults with disabilities participating in the workforce at levels similar to their peers who do not have disabilities*

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

- *A guiding vision to increase public and business expectations about employing the abilities and capacities of all people with disabilities to work in the right job with the right level of support*
- *A policy framework that guides present and future decisions related to people with disabilities who receive public services*
- *Guidance to provide clarity on how this policy will be applied across state agencies*
- *Instruction to act to develop and implement plans to ensure the Employment First principles and informed choice are integrated into new and existing employment-related policies, services and supports for people with disabilities."*

The policy contains an important call to action for coordinated implementation among the Minnesota Departments of Education, Employment and Economic Development, and Human Services. Advisory members noted that given the significance of transportation issues for supported employment, coordination of implementation with the Minnesota Department of Transportation would also be worthwhile. Kim Peck agreed with the necessity of addressing the transportation challenges faced by many and noted that MNDOT is engaged via the Minnesota Olmstead Plan.

Kim Peck stated that one of VRS' proposed legislative priorities is to secure support to provide training assistance to EE providers in order to assist with the modifications and transformation levels envisioned within both the Minnesota Employment First Policy and the Minnesota Olmstead Plan.

Key Perspectives for EE Rule Revision Work

Advisory members are asked to keep a system wide view for the EE Rule Revision topic discussions. The five key perspectives are summarized as:

- 1. Advocacy Organizations**
- 2. Public Partners**
 - Local level - counties, municipalities, etc. e.g. Ramsey County
 - State level - agencies, etc. e.g. Department of Human Services (DHS), Minnesota Olmstead Plan
 - Federal level
- 3. Extended Employment (EE) Providers**
- 4. EE Workers**
 - Currently working
 - Eligible but not currently working
- 5. VRS - EE Rule 'Owner' and Accountable Agency**
 - VRS EE team: John Sherman, Anita Kavitz and Wendy Keller
 - Other DEED and VRS staff

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Advisory Working Session on EE Rule Discussion Topics

Group Two Topics

GROUP TWO (discussion topics for October 8 & 29, 2014 meetings)

- 4. Federal Implications for Olmstead**
- 5. Capping Non-Competitive Employment**
- 6. Eligibility of Workers**

Overview of the Statement of Department of Justice (DOJ) on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.

VRS Senior Rehabilitation Consultant Anita Kavitz presented an overview of the key components of the above mentioned Statement to the Advisory Committee. The overview presentation included regulatory requirements and legal findings, definitional components of integrated, segregated and congregate settings, assessment and evidence of various settings, informed choice process requirements, compliance duties of public entities, and violations and remedies for public entities.

Following the DOJ technical assistance guide review, Anita introduced a draft Informed Choice process based upon the reviewed guide for reaction and refinement by the Advisory Committee. The draft process consists of the following 12 steps:

1. The assessment is reasonable and objective
2. Identify the individual's needs
3. Consider whether individuals with similar needs are working and receiving services in integrated employment settings with appropriate supports
4. Identify the supports and services necessary for the individual to succeed in an integrated employment setting
5. Provide the individual with information about the benefits of employment in integrated settings
6. Facilitate visits or other experiences in integrated employment settings
7. Offer the individual opportunities to meet with other individuals with disabilities who are working and receiving services in integrated employment settings
8. Offer the individual's family, if appropriate, opportunities to meet with families of other individuals with disabilities who are working and receiving services in integrated employment settings
9. Offer the individual opportunities to meet with service providers who are supporting individuals with disabilities in integrated settings
10. Identify objections and concerns expressed by the individual, and family members if applicable

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

11. Identify remedies to address the individual's and family members' objections and concerns
12. Ask the individual if opposed to working in an integrated setting. If not opposed, begin referral process.

John Sherman asked the advisory to keep in mind that the process of informed choice is essential to both those new to employment as well as those who are already in employment. Informed Choice includes an ongoing check-in process to ensure the individual is aware of, and provided, employment choices in the most integrated setting possible.

Important Considerations for Revision offered by the advisory as related to:

▪ Perspectives on 'Integration' and the draft Informed Choice Process:

1. Advocacy Organizations

- We like the draft Informed Choice Process. Our hope is that DEED/VRS's design and implementation will be done with a good degree of collaboration and coordination with other key agencies including Department of Education, Department of Human Services and Department of Corrections to foster greater consistencies across the related programs and services. It is often confusing and time consuming for individuals and their families to navigate the various programs. If we are working on the implementation of all the DOJ rulings, this presents an opportunity to develop the enhanced processes for a better experience and outcomes on multiple dimensions.
- We concur with the opinions expressed earlier that there needs to be a balance between offering information and choice without pushing individuals too hard.
- We would like to see the use of 'plain language' as much as possible.
- We like the approach of offering individuals the opportunity to 'field test' different options as another means to explore their employment strengths and interests.
- Agree that annual informed choice process is good standard practice and that the options for reassessment on a more frequent basis should be available when situations change.
- Employment is often a 'lynchpin' to other areas of people's lives. The reality today is that employment is a key to a good quality of life. If you live on Social Security, you are living in poverty.

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

- We understand that this will be a resource intensive process and share concerns on how these services can be funded without negatively impacting the number of individuals served as well as other employment services.

2. Public Partners

- This draft process effectively lays out a good path. If people have been in the 'Gulag of their experience' for a while, we need to continue to offer visits and experiences to help them see what else is available and to gain the confidence and support to try something new/different.
- Are there opportunities to reduce the documentation overload for both service providers and individuals through this process? We know that case managers are already overburdened with 'paperwork'.
- We have concerns about some of the DOJ's content around 'fundamental alteration defense' and 'most integrated setting as appropriate'. It feels like it leaves too much 'wiggle room' and may be more subject to litigation. Would like to see more clear and definitive language to get a better sense of how each would play out in the courts.
- Agree with above concern - some of the key language leaves a lot for interpretative discretion however we also understand from our own agencies real life complexity experiences why 'as appropriate' is necessary to address the full spectrum of possibilities. It is tough to create a policy that perfectly anticipates and addresses each specific situation.

3. Extended Employment (EE) Providers

- We think the draft Informed Choice Process is an excellent tool in both flow and presentation. Olmstead is about providing choice. We must always remember that what we (EE Providers) think is best for people may or may not be what they think is best for them. We must resist thinking we know best. We must never assume. We must always ask.
- We think it's important to provide actual work experiences in an integrated setting whenever possible.
- Either the language 'hits it or not' and we would like to see clear and concrete language as much as possible.
 - John Sherman: When we bring the Rule revision to the Judge, we must be able to address two critical elements: 'needed' and 'reasonable' in order for the court to approve the Rule.

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

- The DOJ Statement is not disrespectful. It challenges us to enrich the thinking around how we continue to do the right thing for individuals and their families.
 - Adding more activities to staff who are already overworked could result in degraded or eliminated services. There is only so much we can do with the current resources available in the system today.
 - With the recession lows behind and the current better economic climate, we are finding employers more receptive, and even asking for help, in employing more persons with disabilities. This change is happening at a better time. Employers are key for greater integration and competitive employment opportunities to occur.
 - We agree that Informed Choice is the way to go. How it can be implemented and how will it be resourced are major questions. Will we experience tradeoffs of providing this new level of service to 20 at the expense of another 40? How can we provide the benefits of this to a wide cross-section of the same/more individuals?
 - Major concerns around how the system will afford this extensive of an informed choice process and how can it be done so that it is not at the expense of serving more individuals. We will no doubt learn as we go and adapt and change however the resources required to fulfill these federal regulations will be significant.
4. **VRS - EE Rule 'Owner' and Accountable Agency**
- VRS shares the concerns around the anticipated significant resources that will be required to meet the eligibility and assessment requirements. Combined with the 15% federal WIOA requirement for Transition Youth services, it raises significant concerns about the level of funding and the impacts to other employment services.
 - While the draft Informed Choice process may be more resource intensive on the front end, we know from the data that institutional options are much more expensive in the long-run. Helping people gain integrated, competitive employment provides a lot of benefits to our economy. We have to make the case effectively that the investment in employment services and supported employment have significant returns to both individuals and society as a whole.

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Important Considerations for Revision offered by the advisory as related to:

▪ **Eligibility of Workers Topic**

Anita Kavitz distributed the following two handouts:

1. *'EE Eligibility Index of Recommended Changes - 10/28/2014'*
2. *'Appendix 2: Understanding the relationship between the Federal Medical Assistance Waiver Program and Minnesota's Extended Employment Program'*

She provided a brief introduction to the first document and asked the Advisory to review the recommended changes pertaining to this EE Rule topic in preparation for discussion at the next Advisory meeting in November.

Recap of Working Session

As it relates to the Informed Choice Process, the advisory recommends the following:

1. The draft Informed Choice Process be approved for additional development. The draft provides a good starting path that can be built upon with more detail.
2. Overall, the process should be as complete as possible without creating undue resistance, pressure or harm to the individuals. The process should be both 'kind' and 'informed'.
3. The draft should be enhanced to include a 'loop' that indicates a recurring process. While a standard interval such as annually may be established, the advisory also recommends that given individuals' situations may change at any time, that the informed choice process have the flexibility to provide reassessment when there is a change in conditions that merits a review prior to the regular interval.
4. Re: Step 11. Consumers input is primary to the process and the informed choice process must ensure the voice of the consumer is heard.
5. Re: Step 6. Understanding the DOJ statement language is 'facilitate visits **or** other experiences in integrated employment settings', there was a recommendation to consider replacing '**or**' with '**and**' to require both are explored wherever possible.
6. Re: Step 5. Because the individual needs to understand how work fits into other programs, the advisory recommends that this step includes benefits counseling and review.
7. Re: Steps 10 & 11. In addition to 'objections and concerns', the advisory recommends adding 'misunderstandings' in both steps.

The discussion was drawn to a close due to meeting end.

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for October 29, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Next Steps & Wrap Up

1. The committee requests a copy of the morning's presentation entitled "***DOJ Technical Assistance Guidance: Enforcement of the Integration Mandate of Title II of the ADA and Olmstead v. L.C. as it relates to the duties of public entities; integrated / segregated settings; and informed choice***" VRS EE staff will email to the advisory committee along with the session notes.
2. The advisory committee approved cancellation of the scheduled November 12th meeting in favor of a longer meeting on November 19th. The November 19th meeting will be hosted at the Ramsey County Public Works, 1425 Paul Kirkwold Drive, Arden Hills, MN 55112.
3. Preview for November 19th Working Session:
 - Updates on Group One and/or Two Topics as needed
 - Continue discussion on Group Two Topics:
 - Federal Legal Implications for Olmstead
 - Capping Non-competitive Employment
 - Eligibility of Workers

Remaining 2014 Advisory meeting dates are:

- Nov 19
- Dec 10, 17

Meeting Adjourned

The meeting was adjourned at 2:30pm.