



August 24, 2020

The Honorable Mark Schultz
Assistant Secretary
Office of Special Education and Rehabilitative Services
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Assistant Secretary Schultz:

The National Federation of the Blind appreciates the efforts of the Office of Special Education and Rehabilitative Services to improve competitive and integrated employment practices with respect to blind Americans. We believe these strides are positive contributors to promoting equality and opportunity for the nation's blind to live the lives we want. As President of the National Federation of the Blind, I urge you to amend 34 CFR § 361.5 to include unemployment benefits in the definition of "comparable services and benefits."

At our organization's 2020 National Convention, we passed Resolution 2020-04 (attached), regarding repeal of discriminatory legislation concerning unemployment for blind workers. It is no secret that many Americans, including those with disabilities, have lost their jobs as a result of the COVID-19 pandemic. The majority of displaced workers were able to successfully file for, and begin receiving unemployment benefits, but this outcome was not the case for many Americans with disabilities. For instance, Shirley Colbert, a member of the National Federation of the Blind of Louisiana was laid off from her position as a laser operator at the Louisiana Association for the Blind. Ms. Colbert rightfully thought she would be eligible for unemployment benefits, and was surprised by the rejection of her claim. Section 3309 of the Federal Unemployment Tax Act (26 U.S.C. § 3309(b)(4)), allows agencies to exclude unemployment taxes on the wages earned by their disabled workers. Additionally, these agencies may legally claim employees with disabilities as rehabilitation clients.

Many agencies, such as National Industries for the Blind and others who participate in the AbilityOne program, are calling for amendments to the Rehabilitation Services Administration's sub-regulatory guidance, so that more referrals are prioritized to their agencies. At the same time, some of these agencies refuse to classify their workers as employees and take advantage of the exclusionary language of the Federal Unemployment Tax Act. In order to comply with 34 CFR § 361.56, a rehabilitation client must achieve an employment outcome consistent with the person's individualized plan for employment. 34 CFR § 361.5 (c)(15) further explains that an employment outcome is achieved when the disabled person's role is comparable to that of a nondisabled person, which includes interactions, working conditions, job responsibilities, and benefits that are offered to nondisabled persons in equal capacities. Agencies like the Louisiana Association for the

Blind must extend equal opportunities in all facets of employment to their blind colleagues, especially blind people who become unemployed as a result of a state, local, or company/organization-wide disaster or disruption.

I strongly encourage you to amend the comparable employment services and benefits to include unemployment benefits for persons with disabilities who work in non-integrated settings. Furthermore, I urge the Office of Special Education and Rehabilitative Services to continue to mandate competitive integrated employment for a successful case closure. As President of America's premier civil rights organization of the blind, I thank you for considering our recommendations, and I look forward to continuing the conversation surrounding competitive and integrated employment for disabled Americans.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Riccobono", with a long, sweeping flourish extending to the right.

Mark A. Riccobono, President
National Federation of the Blind