

## ***Situational Assessment***

*Please note: The information in this handout is based in part on materials and methods developed by Our House, Inc., Berkeley Heights, NJ. Thanks and appreciation are extended to Ellen Ball Nalven, Director of Employment Services at Our House for her willingness to share information and techniques in the preparation of this material.*

Situational Assessment is a valuable tool for assisting a person with a disability to make choices about the types of jobs and work environments that they would enjoy. Situational assessment (also known as job sampling, on-the-job assessment, or environmental assessment), is assessment using actual employment and community settings. Assessments in simulated work environments, and in facility based programs such as sheltered workshops, simply do not contain the various nuances and variables of actual work environments, which are necessary to make an educated choice concerning employment options.

Through situational assessment, the job seeker is given real choice through exposure to a variety of work environments, and is not forced to rely on the “expert” opinion of professionals or family members concerning what kind of work is and is not appropriate for them. The job seeker and job developer are able to learn about the complete “reality” of the work environment including: task skill requirements, variety of tasks and activities on the job, social skill requirements, formality and rigidity of the work environment vs. informality, pace of activity, amount of personal interaction, and ultimately the comfort level of the job seeker with different environments. Sometimes enormous time and energy will be spent by the job seeker and job developer pursuing a specific type of job based on very limited information of that particular field of work. If and when a job is finally secured, it is found that the job is a poor job match for the individual. Situational assessment allows for information to be generated quickly concerning employment options that are worth pursuing further, avoiding time wasted on inappropriate job searches.

Situational assessment reduces the risk both to the job seeker and the employer in the placement process. Particularly for job seekers who are somewhat ambivalent or concerned about working in the community, situational assessment expands the job seekers exposure to the community in a low-risk way. One of the criticisms of more traditional assessment techniques is that they evaluate work skills that have limited application in today’s workplace. Through situational assessment, skills are assessed that are used in actual work environments.

Availability of supports and support needs can also be more readily identified through situational assessment. Situational assessment allows for evaluation of an individual’s support needs in an actual work environment, as well as the ability of the work environment to “naturally” provide those work supports. Situational assessment also helps to deal with the issue of so-called “job readiness”. A major barrier for placement of people with disabilities into employment has often been the determination by experts that the individual isn’t “ready” to work in the community due to behavioral issues, lack of motivation, etc. Yet experience has shown that when an individual is in a “real” work environment in the community, those issues considered to be a barrier to employment turn out to be non-issues. For example, behavior which is considered “inappropriate” in a facility based program, may found to be perfectly appropriate for a work

environment in the community, or the change in environment may cause the behavior to diminish or disappear.

Like any tool, situational assessment should be used in a sensitive manner, based on individual job seeker needs. For people with extensive work histories, and for those whose job goals have become clear through more traditional methods, situational assessment is not necessary or appropriate. However, situational assessment is helpful for individuals with little or no work experience; difficulties with communication, or people whose job goals are unclear.

### **Identifying Assessment Sites**

In identifying assessment sites, start with the job seekers preferences. What kind of jobs have they expressed interest in? What kind of ideas have been generated through the planning process that need further exploration? However, don't necessarily be limited by the expressed interests of the job seeker. Remember, part of the purpose here is to expand the horizons of the job seeker, so look for other work environments which might provide further information on the job seekers preferences, and alternative choices for them.

The next step involves contacting employers to arrange situational assessments. Methods used for job development for actual placements, such as networking, cold calling, etc., are used to set up situational assessments. However, contacting employers to set up situational assessments is considerably simpler than job development for actual placements, since the commitment you are asking from the employer is relatively small: the use of their facility, and a little bit of their time & cooperation. For example, let's say you are working with someone who is interested in music, and among the ideas that have been identified is working in a recording studio. You contact a studio and say something to the affect of, "I'm working with an individual who is interested in possibly working in a recording studio. At this point, we're still identifying what tasks they could do in this type of environment. If possible, I would like to bring this individual in, to not only see your facilities and what you do, but to give them the opportunity to try out various jobs and tasks in the studio, to get an idea of what kind of jobs might be worth pursuing for this individual. Our agency would pay the individual for performing this work, and there would be no cost to you". From there, it would be a matter of negotiating the specifics of the assessment.

The following are basic guidelines for what to cover when meeting with employers concerning setting up situational assessment.

- Give a brief description of your agency and the job seekers you represent
- Give an overview of what situational assessment is, and the advantages of using actual work environments for assessment.
- Learn about their business - what they do and how they do it
- Through your discussions with the employer and tour of the workplace, identify specific areas and tasks to be part of the assessment process
- Be very clear about the parameters of the assessment – that the purpose here is for evaluation, not to be extra help for the employer.
- Emphasize the value you place on not inconveniencing the employer when situational assessments occur (i.e., you recognize they have a business to run). Assure the employer about staff availability, professionalism, and responsiveness

- Solicit and respond to concerns
- Discuss specifics of setting up an assessment
- Provide written materials which reemphasize items discussed

You may already have contacts and opportunities within your organization, which can be used to set up assessment sites. These include:

- Using the networking contacts that already exist within your organization.
- Using employers which you previously contacted, had no current job openings, but seemed open to the possibility of hiring a worker with a disability.
- Using sites where you already have individuals working. If your agency has enclaves, or transitional employment, this involves simply adding an extra person. However, in cases where people are working in individual placements (which is hopefully the vast majority of the people served by your agency), this should be done with caution. If the person works for a large employer, with departments or sites that are separate from the person who already works there, this may be an option. However, the assessment should not occur side-by-side, or near the person with a disability who is employed there.

A good practice during job development, when it is clear that there are no immediate employment prospects, is to ask about using the employer's workplace for assessment. This can be a great way to develop relationships with employers over the long-term, creating understanding in a gradual fashion of the capabilities of people with disabilities. In the author's experience, there have been several occasions where the use of an employer as an assessment site over an extended period of time has led to the development of actual placements with that employer.

In developing assessment sites, there can be two approaches. One approach is identifying sites for one-time use by a specific individual. The other approach is developing a number of sites, which can be used on a periodic basis, with assessments set up with a few days notice. This typically can be set up through fairly informal agreements with employers (i.e., "We'll give you a call a few days ahead of time, to let you know when someone is coming in for an assessment"). Having a number of sites pre-arranged can rapidly speed up the assessment process, rather than having to take the time to develop various sites for each individual you serve. However, if an individual has a specific interest for which an assessment site does not already exist, then a new site should be arranged; telling a consumer "Sorry, we don't have an assessment site in that kind of job", is no excuse. It's important to have a number of different types of employers available to use for assessment, that represent the diversity of interests of job seekers, and the wide array of employment opportunities available in the community. The employers should be both traditional (e.g., retail, food service, janitorial, etc.), as well as non-traditional. It can also be helpful to have assessment sites with similar tasks, but different work environments, in order to see the impact of different environments. For example, clerical work in a small office which employs 20 people, is a very different experience from a large corporate employer with 2,000 employees. Finally, it's important not to "burn out" employers. Part of the discussion with businesses in arranging assessments, should be around how often they are comfortable with using their work site for assessment. Agencies should be careful of not using the same assessment sites too often, both to provide more diverse assessment experiences for job seekers, and to maintain positive business relationships.

### **Length of the Assessment**

The length of the assessment is going to be very dependent on the individuals involved. In some cases, a few hours may be enough to provide sufficient information about a specific type of job, or may be all that an individual has the energy or tolerance for. In other cases, several days at the same job site may be appropriate. The decision should ultimately come down to determining the length of time it will take to gather sufficient information in order to make a decision about whether or not to move forward with job development in this particular type of work. In some cases it may be necessary and worthwhile to do an assessment at the same site several times, to allow the person an opportunity to get used to the work environment and tasks.

### **Number of Assessments**

Similar to the length of assessments, the number of assessments is going to be dependent on the individual. In some cases, for people who have a pretty clear idea of what they want to do, a couple of assessments can be used to confirm the direction to go in, and provide some more specific information about areas for job development. In other cases, for people who are unsure about what types of jobs they are interested in, or it is not clear what direction to go in, many different assessments might be necessary, at a wide variety of employment sites.

### **Doing the Assessment**

The following are some basic guidelines for the actual assessment:

- Agency staff presence during the assessment is dependent on the individuals involved in the assessment and the employer. In general, the rule should be to err on the side of too much staff presence rather than too little, particularly with newer assessment sites. There are cases where individuals are fairly independent, where the individual may not be comfortable with ongoing staff presence, and where it may be stigmatizing. In those cases, staff presence should be lessened. There also may be assessment sites where there is a well-established relationship with the employer, and supervisors and co-workers feel comfortable being more involved in the assessment, handling issues that may arise.
- Ask the employer ahead of time about how staff will be informed about the assessment, and how you may assist in creating understanding and comfort with what is occurring
- Make sure the job seeker is dressed appropriately for the work environment, and is well aware of the purpose of the assessment
- Ensure that the job seeker performs a variety of jobs and tasks within the work environment
- Use some type of standardized tool to collect information so that a comprehensive assessment occurs; make sure the assessment includes evaluation of job skills, as well social & workplace culture issues
- Encourage interaction between the individual with a disability, and the employees who are working there.
- Be very conscious throughout the assessment about the work environment; minimize the intrusion into the workplace and avoid creating a distraction
- At the end of the assessment, get feedback from the job seeker as well as the employer.

## **What to Assess**

The following is a list of some areas for exploration during situational assessment. This information should be examined from two perspectives: 1) the criteria or requirements of the field or specific job in each of these areas; 2) the comfort level or ability of the job seeker to meet these requirements.

- Formality or informality of workplace
- Amount of supervision
- Level of interaction with co-workers and supervisors
- Camaraderie and socialization of employees
- Level of worker autonomy
- Variety of tasks
- Training required
- Stamina and endurance
- Mobility requirements
- Communication
- Production rate
- Strength: lifting and carrying
- Manual dexterity
- Reading requirements
- Mathematics/counting
- Level of independence required
- Customer contact
- Dress requirements
- Need to work independently
- Flexibility and changes in routine
- Complexity of tasks
- Repetitive nature of tasks
- Amount of self-initiative required
- Need/ability to tell time and time awareness
- Stress and pressure of position
- Need to ask for assistance
- Area orientation requirements
- Environment: noise, temperature, indoors/outdoors

## **Using the Information from Situational Assessment**

Once situational assessments have occurred, the job seeker can discuss the experiences with the job developer, and make decisions about the direction of the job search. Discussion should include such things as: what work environments the job seeker liked/disliked and why, what tasks they did well and enjoyed performing, tasks they found to be a challenge, what places the job seeker felt comfortable, things that were different than expected, etc. The information then can be used to target specific jobs and employers. The job seeker and the job developer can confidently state to prospective employers, that the job seeker has spent time in work environments similar to the prospective employer, and has demonstrated the ability to perform tasks and jobs within that work environment.

For individuals with significant disabilities, who require some type of job creation or job carving, situational assessment can be a very useful tool in identifying those specific tasks which can be “carved out” to create a job. Suppose for example that the job seeker is doing an assessment in an office environment. The results of the assessment indicate the individual is comfortable in that environment, that they are able to handle sorting of mail to about 30 people, to do simple copy work, and basic filing which involves matching documents to file names. However, the assessment showed that complex copy work (multi-page double-sided documents) and filing that requires a high degree of alphabetizing are

tasks that go beyond the capabilities of the individual. The job developer and job seeker can then use the information to identify and create positions that consist of the tasks the individual did well on.

### **Situational Assessment as Job Try-Out**

So far, we have addressed the use of situational assessment as a major component of the planning and evaluation process prior to job development. However, there is another way that situational assessment can be used: as a job “try out” as part of the hiring decision. In essence what occurs during the course of the job developer’s negotiations with an employer, is offering an opportunity to fully evaluate the individual’s ability to perform the tasks of the position, by allowing the individual to try the job for a few hours, a day, or even a couple of days, at no obligation to the employer. If situational assessment is going to be used in this way, the following guidelines are important:

- It is imperative that the parameters of the assessment are clear to all involved, including the length of the assessment, and at what point the hiring decision will be made.
- The person with a disability must be absolutely comfortable with the idea of situational assessment as a job try out. While the benefits of using such a tool should be explained to the job seeker, ultimately if they are not comfortable with it, it should not be used.
- When using situational assessment for evaluation purposes, it is helpful but not an absolute requirement, to have the involvement of co-workers and supervisors. In the case of a job try out however, it is essential in order to identify the fit between the individual and the work culture, to identify supports available, and in order that the employer has sufficient information to make a hiring decision.
- When using situational assessment as a job try out, it should be clearly explained to the employer that the purpose is to determine whether the individual has the potential to successfully perform in the job over the long-term. The employer should not necessarily expect the individual to have “mastered” the job at the end of the assessment, particularly if they have a longer learning curve.

There are sometimes concerns about possibly stigmatizing the person with a disability when situational assessment is used as part of the actual hiring process. The basic concern is expressed as “people without disabilities don’t typically have to try out a job before they get hired, so why should people with disabilities have to do so.” This is very much a valid concern. However, consider the criteria that are typically used in hiring: performance in an interview, background and experience, and possibly the results of testing. Using the typical hiring process is always the preferred choice; however, the typical hiring process does not always create awareness by the potential employer about the strengths and abilities of an applicant with a disability. The reality for many people with disabilities is that the typical criteria are going to exclude them from being hired. Due to physical challenges in communicating, difficulties in verbally articulating their thoughts, or simply lack of experience in interviewing, some people with disabilities perform poorly in interviews. People with disabilities often have limited work experience which demonstrates their ability to perform successfully in the job. Limited academic skills can create challenges in performing on tests. In such cases, alternative strategies must be developed so people with disabilities can demonstrate to employers that they can perform the tasks of a job which they are applying for.

If situational assessment as a job try out is being used, job developers should bear in mind that employers are not simply doing them a favor by allowing its use. Situational assessment as a job try out should instead be portrayed as a reasonable accommodation, under the Americans with Disabilities Act, in lieu of the normal hiring process, in order that the job applicant with a disability gets equal consideration. We also must bear in mind that part of job seeking is not just the employer making a

decision concerning whether or not they wish to hire a job seeker. The job seeker also needs to make an informed decision about whether they want to work in the type of job being considered, and for that particular employer, and situational assessment can provide that type of information.

In deciding whether or not to use situational assessment as a job try-out, consider the following:

- Can the job seeker properly represent their abilities through normal hiring processes of interviewing, testing, and assessment based on past work experience and education?
- How well does the job seeker communicate, interact and respond to questions?
- Most importantly, what does the job seeker want, and what are they comfortable with?

Ultimately, the decision about using situational assessment as a job try-out comes down to the answer to the following question: will the normal hiring process allow the individual with a disability to receive equal consideration along with other applicants? If not, then a job try out using situational assessment may be a useful tool.

## **USDOL GUIDANCE ON UNPAID COMMUNITY-BASED ASSESSMENT**

[Excerpted from USDOL Wage and Hour Division (WHD) Field Operations Manual – Chapter 64, Section 64c08. Full text of guidance is available at: <http://www.dol.gov/esa/whd/foh/ch64/64c08.htm>]

### **STATEMENTS OF PRINCIPLE**

The U.S. Department of Labor and community-based rehabilitation organizations are committed to the continued development and implementation of individual vocational rehabilitation programs that will facilitate the transition of persons with disabilities into employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers or other programs providing rehabilitation services to individuals with disabilities.

The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.

### **GUIDELINES**

Where ALL seven of the following criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purpose of the Fair Labor Standards Act. (Note: the criteria are the same for both students and non-students enrolled in vocational rehabilitation programs):

1. Participants are individuals with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive ongoing support to perform in a work setting.
2. Participation is for vocational exploration, assessment or training in a community-based placement work site under the general supervision of rehabilitation organization personnel, or in the case of a student with a disability, public school personnel.
3. Community-based placements must be clearly defined components of individual rehabilitation programs developed and designed for the benefit of each individual.
  - a. Each student with a disability shall have an Individualized Education Program (IEP) which lists the needed transition services established for the exploration, assessment, training, or cooperative vocational education components.
  - b. Each participant in a community-based rehabilitation organization program must have an Individual Plan for Employment (IPE) which includes a statement of needed transition services established for exploration, assessment, or training components. In the past these plans were called Individualized Written Rehabilitation Plans (IWRP).
4. Documentation will be provided to the Wage and Hour Division of the US Department of Labor upon request, that reflects that the individual is enrolled in the community-based placement program,

that this enrollment is voluntary and that there is no expectation of remuneration. However, the information contained in the IEP or IPE does not have to be disclosed to Wage and Hour. The individual with a disability and, when appropriate, the parent or guardian of each individual must be fully informed of the IEP or IPE and of the community-based placement component of the plan.

5. The activities of the individuals with disabilities (participants) at the community-based placement site do not result in an immediate advantage to the business. Factors that would indicate the business is advantaged by activities of the individual include:
  - a. Displacement of regular employees.
  - b. Vacant positions have been filled with participants rather than regular employees.
  - c. Regular employees have been relieved of assigned duties.
  - d. Participants are performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
  - e. Participants are under continued and direct supervision of employees of the business rather than representatives of the rehabilitation facility or school.
  - f. Placements are made to accommodate the labor needs of the business rather than according to the requirements of the individual's IEP or IPE.
  - g. The IEP or IPE does not specifically limit the time spent by the participant at any one site, or in any clearly distinguishable job classification.
6. While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours spent in each activity, as a general rule, an employment relationship is presumed not to exist when each of the three components does not exceed the following limitations:
  - a. **Vocational explorations** - 5 hours per job experienced
  - b. **Vocational assessment** - 90 hours per job experienced
  - c. **Vocational training** - 120 hours per job experienced

In the case of students, these limitations apply during any one school year.

7. Individuals are not entitled to employment at the business at the conclusion of the IEP or IPE. However, if an individual becomes an employee, the person cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.
- An employment relationship will exist unless all of the criteria described in this policy [FOH 64c09(c)] are met. If an employment relationship is found to exist, the employer will be held responsible for full compliance with the Fair Labor Standards Act (FLSA), including those relating to child labor.
  - Business and rehabilitation organizations may, at any time, consider participants to be employees and pay them the full minimum wage required by section 6(a) or the Service Contract Act. Properly certified employers may also pay sub-minimum wages to participants who are disabled for the work being performed. Employees under age 20 may be paid the Youth Opportunity Wage as provided by section 6(g) of the FLSA rather than a sub-minimum wage. The Youth Opportunity Wage may never be the prevailing wage upon which a commensurate wage is based.

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## QUESTIONS AND ANSWERS

In 1993, the U.S. Department of Labor and the National Rehabilitation Facilities Coalition jointly issued similar guidance regarding the FLSA employment relationship and individuals with disabilities (not students in local public school systems) who are enrolled in individualized community-based rehabilitation programs. (Enrollment in individualized community-based rehabilitation programs for these individuals means placement in a work site away from the rehabilitation facility.) The information above, from the Wage and Hour Division Field Operations Handbook, is based on this guidance. The following are questions and answers that were included as part of that joint issuance.

- **The criteria in the guidelines indicate that the community based rehabilitation program is intended for consumers who will need “intensive on-going support” to perform in a work setting. Does this mean that it is intended for consumers with more severe disabilities?**

Community-based vocational programs are intended for those consumers with more severe disabilities. However, the level of severity must be based on skills and behaviors necessary to function in a work setting. Examples of on-going support services include job redesign, environmental adaptation, personal assistance services, transportation, and social skills training.

- **If the activity is ordinarily not performed by the employees and yet is beneficial to the business, can the consumer perform the activity?**

The consumer should either not perform the activity or be paid appropriate wages. Although regular employees have not been displaced or relieved of assigned duties, the consumer is still providing services which are of benefit to the business. Therefore, an employment relationship exists between the consumer and the employer. This would not be the case if the activity were of no benefit to the employer and consisted of “busy work” designed to develop or improve a consumer’s skills. For example, reorganizing materials awaiting shipment into sets of five would not constitute an employment relationship if the business did not ship materials in this manner.

- **What are the implications of the “continued and direct supervision” requirement for agencies and employers?**

Direct supervision can include: 1) one to one instruction, 2) small group instruction, 3) supervision in close proximity, and 4) supervision in frequent, regular intervals. Supervision in regular, frequent intervals is permitted when the goal is to assess ability to work independently or to demonstrate mastery of the vocational skill.

- **What type of documentation is required?**

Three types of documentation must be employed to meet the requirements of these guidelines: 1) an IPE reflecting vocational instruction and training goals and objectives relevant to community based vocational experience; 2) a letter of agreement outlining the understanding of the requirements listed above and signed by all participants and 3) ongoing case notes (i.e. attendance records, progress reports).

- **What is the distinction between benefit to consumer vs. benefit to employer?**

Benefit to the employer occurs when the employer recognizes an immediate advantage by having the consumer working on the premises. An immediate advantage can be described in terms of increased profitability or production for the business. The courts and experts in the field suggest that for the community based experience to represent a valid experience the following instructional practices should be implemented:

- 1) Consumers receive adequate orientation and instruction before performing new tasks.
  - 2) The consumer's goals and objectives to be met in the community-based vocational rehabilitation program are clearly defined.
  - 3) Activities in the community-based setting relate directly to the consumer's goals and objectives.
  - 4) The consumer's activities in the community based vocational rehabilitation program are closely monitored.
  - 5) Records of the consumer's progress are maintained.
  - 6) The necessary support and time for consumers to develop proficiency at new tasks are provided.
- **What is the role of the agency in assuring that regular employees will not be displaced by the consumer in the workplace?**

The community experience must be primarily for the benefit of the consumer. Also the regular employees must not be displaced or relieved of their assigned duties and vacant positions should not go unfilled. Two strategies are available to the rehabilitation organization for ensuring that this criterion is met. First, the agency can confirm that all parties - the employer and the consumer - understand that the consumer must not displace regular employees. An agreement documenting this understanding should be signed by all involved. Secondly, those who provide direct supervision to the consumer at the worksite may observe when employee displacement and other violations are occurring and take steps to correct the situation.

- **Do these guidelines from the U.S. Department of Labor supersede individual State Departments of Labor regulations?**

No. It is important that community-based vocational education programs comply with both the U.S. Department of Labor regulations and State Department of Labor regulations. Where the two do not agree, the regulations with the most stringent requirements for protecting individuals in work settings must apply.