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WORKFORCE DEVELOPMENT SYSTEM TECHNICAL ADVISORY

Workforce Development System Technical Advisory #08-9

TO: Chairpersons of Local Workforce Investment Boards
Chief Elected Officials
Regional Representatives
WIA Grant Recipients
WIA Fiscal Agents
WIA Local Area Contact Persons
WIA One-Stop Operators
DEWS Team Leaders

DATE: December 15, 2008

SUBJECT: Impact of the *Martinez v. County of Monroe* Decision on Programs Operated Under Title IB of the Workforce Investment Act (WIA)

PURPOSE: To transmit guidelines concerning the effect of the *Martinez v. County of Monroe* decision on eligibility determinations under WIA Title IB Programs, including the definition of “Family,” “Eligible Youth,” and “Displaced Homemaker”

BACKGROUND:

In November 2004, an employee of Monroe Community College was denied spousal health care benefits based on the College’s failure to recognize her same-gender marriage which had taken place in Ontario, Canada, where it was legally valid. This employee took legal action to protest this denial but the court initially found in favor of her employer and held that her marriage was not entitled to recognition in New York State. On appeal, this was overturned. The court concluded that the same-gender marriage, valid where it was performed in the Province of Ontario, Canada, was entitled to recognition in New York State, in the absence of any specific legislation which would prohibit it [*Martinez v. County of Monroe*, 50 AD3d 189 (4th Dept. 2008)]. All New York State agencies have been directed to assess the *Martinez v. County of Monroe* decision in the context of their programs.

Among other ramifications, this decision impacts definitions used in WIA Title IB eligibility determinations, in that same-gender marriages must be included in the definitions of family, which in turn affects the definitions of eligible youth and displaced homemakers. It is important to note that only same-gender marriages that are legally

recognized in the jurisdiction where they take place are required to be equally recognized in New York State. Currently, these jurisdictions include Canada, South Africa, Spain, Belgium, the Netherlands, Massachusetts, and Connecticut. Further, as of the date of this advisory, same gender marriage in California is not legally recognized (due to the passage of Proposition 8); however, the legality of Proposition 8 is under legal challenge and, therefore, this is subject to change. From time to time, the list of jurisdictions in which same gender marriage are recognized will change; program staff will be informed of such changes as they occur. The policies and/or directives set forth in this document will apply equally to same gender marriages that take place in these additional jurisdictions.

It is important to note that unions of same-gender individuals that take place in New York State are not legally recognized as marriages in New York State, and therefore, do not fall under the guidelines in this advisory.

ACTION:

Within WIA Title IB there are a number of core terms that qualify individuals as eligible for various programs. Family and blood relationships are considerations in the definition of some of these terms. Same-gender spouses, who were married in a jurisdiction that legally recognizes such marriages, are to be considered a family for purposes of WIA eligibility and priority for service. Following is a review of certain provisions in the WIA statute where the definition of “family” is relevant.

WIA Section 101(15) provides the definition of “family” as “two or more persons related by blood, marriage or decree of court” which includes a husband and wife and dependent children.

As defined in WIA Section 101(13) eligible youth must be “low-income” (unless enrolled under the 5 percent exemption). The definition of “low-income individual” is found at WIA Section 101(25) and the amount of family income is a factor in making the determination of “low income” (note that family income is disregarded for individuals with disabilities). The definition of “low-income” is also a consideration in determining local priority of intensive and training services for adults under WIA Section 134(d)(4)(E).

A “displaced homemaker” as defined in WIA Section 101(10) is an individual who has been providing unpaid services to family members in the home, and who has been dependent on the income of another family member but is no longer supported by that income.

Each of these items is based to a large degree on the designation of “family” and the definition of who constitutes a spouse for the purposes of calculating family income. The Martinez decision requires that same-gender marriages that are legally recognized in the jurisdiction where they took place must be afforded the same legal recognition in New York State. Accordingly, local areas are to include legally recognized same-

gender marriages in their eligibility determination procedures and income calculations and in considerations of priority for intensive and training services for adults.