



# **The Essential Guide to School Transition, Competitive Integrated Employment, and Compliance with the ADA, *Olmstead*, and Section 511 of WIOA**

**Vocational Rehabilitation Youth Technical Assistance Center  
Institute for Educational Leadership**

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## Acronyms Used Throughout This Guide

- American Job Center (AJC)
- Americans with Disabilities Act (ADA), Title II - 42 U.S.C. § 12101 *et seq.*; 28 C.F.R. Part 35
- Career Counseling and Information and Referral (CCIR)
- Competitive Integrated Employment (CIE)
- Designated State Unit (DSU)
- Fair Labor Standards Act (FLSA)
- Free Appropriate Public Education (FAPE)
- Individual Plan for Employment (IPE)
- Individualized Education Program/Plan (IEP)
- Individuals with Disabilities Education Act (IDEA) - 20 U.S.C. 1400 *et seq.*
- Intellectual or Developmental Disabilities (I/DD)
- Least Restrictive Environment (LRE)
- Local Education Agency (LEA)
- Memoranda of Understanding (MOU)
- The National Technical Assistance Center on Transition (NTACT)
- Office of Disability Employment Policy
- *Olmstead v, L.C.*, (Supreme Court decision) 527 U.S. 581 (1999) (*Olmstead*)
- Out-of-School Youth (OSY)
- Pre-Employment Transition Services (Pre-ETS)
- School Work Experience Program (SWEP)
- State Education Agency (SEA)
- U.S. Department of Education (ED)
- U.S. Department of Justice (DOJ)
- U.S. Department of Labor (DOL)/Vocational Rehabilitation (VR)
- The Vocational Rehabilitation Youth Technical Assistance Center (Y-TAC)
- Work-Based Learning (WBL)
- Workforce Development Board (WDB)
- Workforce Innovation and Opportunity Act (WIOA) - Pub. L. No. 113-128, 128 Stat. 1425 (2014)
- The Workforce Innovation National Technical Assistance Center (WINTAC)
- Workforce Investment Act (WIA)

# Section I. Introduction

## Purpose and Scope of this Guide

The *Essential Guide to School Transition, Competitive Integrated Employment, and Compliance with the ADA, Olmstead, and Section 511 of WIOA* (The Essential Guide) summarizes the current landscape of law and policy regarding youth with disabilities in transition from school to work. The Essential Guide focuses solely on employment, and synthesizes multiple federal statutes and regulations to provide a clear and accessible analysis and explanation of current legal requirements under the Americans with Disabilities Act of 1990 (ADA), the Supreme Court's *Olmstead v. L.C.* (1999) decision, the Individuals with Disabilities Education Act of 1990 (IDEA), and the Workforce Innovation and Opportunity Act of 2014 (WIOA).

## Recent Changes to the Legislative, Regulatory, and Policy Landscape

In recent years, the landscape of law and policy on transition from school to employment for students with disabilities has changed in significant ways. Among other things, federal court cases have clarified and explained the application of the ADA and *Olmstead v. L.C.* to employment-related transition services for youth with disabilities. In addition, in 2014, Congress enacted WIOA, amending provisions of the Rehabilitation Act of 1973 and expanding both the scope of transition services and the population of young people who are eligible to receive them. That same year, the federal government, including the U.S. Departments of Labor (DOL), Education (ED), and Justice (DOJ), issued guidance about the provision of employment-related transition services and the obligations of state agencies, such as vocational rehabilitation (VR), education, and developmental disability agencies, regarding transition. The Essential Guide explores the complementary qualities of these legal requirements and policies; explains the current state of those guidance documents; and provides a roadmap for how state and local governments, youth with disabilities, their families, service providers, employers, and others can navigate these new rules and processes to drive successful employment outcomes for youth with disabilities in competitive integrated employment (CIE).

## Section II. Summary of Legal Requirements and Best Practices for Identifying Youth, Sharing Data, and Coordinating Service Delivery

Congress enacted three statutes that directly impact the provision of transition services to youth with disabilities: the IDEA, the ADA, and WIOA. These laws complement one another, with a consistent shared purpose of supporting students with disabilities in accessing services that will lead to effective post-school outcomes including CIE. To identify the full range of requirements regarding youth in transition, these laws should be read together. Taken together, the IDEA, ADA, and WIOA recognize and require the importance of an organized, collaborative, and multi-lateral system of services and supports to help students with disabilities move from school to post-school employment.

### Individuals with Disabilities Education Act (IDEA)

Under the IDEA, students with disabilities participate in the transition planning process through the Individualized Education Program (IEP) process beginning “not later than the first IEP to be in effect when the child turns 16” or younger if deemed appropriate by an IEP team (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(cc); § 1414(d)(1)(B)(VII)). The IEP must include appropriate post-secondary goals and transition services based on age-appropriate transition assessments related to employment, among other aspects (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)).

#### Statute and Regulations

##### *IEPs and IEP Planning Process*

The IDEA requires states to ensure that children in public school who have certain disabilities receive a Free Appropriate Public Education (FAPE) through special education and related services designed to meet their unique needs (20 U.S.C. §§ 1401(9), 1412(a)(1)(A)). Each student must receive an IEP (20 U.S.C. § 1412(a)(4)). The IEP team must include the child’s parents, teachers, representatives of state agencies, and others, and the IEP must contain the services and supports necessary

for the student to achieve his or her measurable post-secondary goals. To the maximum extent feasible, students with disabilities must be educated with children who do not have disabilities (20 U.S.C. § 1412(a)(5)(A)). The IDEA provides requirements for schools to identify students with disabilities, conduct evaluations, and also provides procedural safeguards for these students and their parents (20 U.S.C. §§ 1414, 1415).

Pursuant to the Least Restrictive Environment (LRE) provisions of the IDEA, both State Education Agencies (SEAs) and Local Education Agencies (LEAs) have obligations under the law to ensure:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (20 U.S.C. § 1412(a)(5)).

### *IDEA Transition Services*

As of the 2004 passage of the IDEA, when every child turns 16, their IEP must include employment-related post-secondary goals and transition services (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa), (bb)). Beginning not later than the first IEP that is in effect when the child with a disability turns 16, or younger if determined appropriate by the IEP team, the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, *employment*, and, where appropriate, independent living skills (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)). Further, the IEP must include transition services, including courses of study, needed to assist the child in reaching these goals (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb)). Such transition services must include types of instruction, related services, community experiences, development of employment and other post-school adult living objectives (and, if appropriate, acquisition of daily living skills), and provision of a functional vocational evaluation (34 C.F.R. § 300.43, 2019).

Under the IDEA, “transition services” are a coordinated set of activities for a child with a disability that is results-oriented and “focused on improving the academic and

functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities” (34 C.F.R. § 300.43(a)(1), 2019). Post-school activities may include “post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation” (34 C.F.R. § 300.43(a)(1), 2019). Transition services must be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests, and include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation (20 U.S.C. § 1401(34)(B)(C)). Transition services for children with disabilities may be special education services, if they are provided as specially designed instruction, or a related service, and they are required to assist a child with a disability to benefit from special education (20 U.S.C. § 1401(34)(B)(C); 20 U.S.C. § 1401(26), (29)).

On June 22, 2012, ED’s Office of Special Education and Rehabilitative Services (OSERS) issued a Policy Letter regarding the IDEA’s LRE requirements and how those requirements apply to the employment portion of a student’s IEP (OSERS, 2012). The letter states that the LRE requirements apply to transition services and planning, and specifically to employment-related transition services and work placements for youth in transition (OSERS, 2012, p. 3). The letter advises that, while the IDEA would not prohibit placement in a segregated employment setting, the LRE provisions of the IDEA “would apply equally to the employment portion of the student’s program and placement” (OSERS, 2012, p. 3). The letter further indicates that, before a student can be placed in a segregated work setting as part of that student’s transition services, the IEP team must consider whether “supplementary aids and services” could be provided that would enable the individual to work in an integrated work setting (OSERS, 2012, p. 4). Supported employment services and supports are such a supplementary aid and service.

### **SHELTERED WORKSHOPS**

In **competitive integrated employment**, employees with disabilities participate in typical jobs in the mainstream workforce, earn wages at or above minimum wage, and interact with employees without disabilities to the fullest extent possible.

**Sheltered workshops** are facility-based employment settings that typically employ only individuals with disabilities except for paid support staff. In these settings, individuals are frequently paid less than the minimum wage and are isolated from their nondisabled peers.

# Americans with Disabilities Act, *Olmstead*, and School Transition

## The ADA and *Olmstead* Requirements

### *Statute and Regulations*

The ADA requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities (28 C.F.R. § 35.130(d), 2019; 42 U.S.C. § 12132). The ADA regulations explain that “[t]he most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible....” (28 C.F.R. Pt. 35, App. B ). Therefore, schools and education agencies that unnecessarily segregate students with disabilities in their pre-vocational transition programs may be liable under the ADA for discrimination.

### *Olmstead v. L.C. (1999)*

In 1999, in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the United States Supreme Court held that Title II of the ADA prohibits the unjustified segregation of people with disabilities into institutional services when community-based services are appropriate, if the affected persons do not oppose community-based services, and where they can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who receive disability services from the entity (*Olmstead*, 527 U.S. at 607).

The *Olmstead* decision also explained that individuals with disabilities do not need to wait until the harm of unjustified segregation occurs in order to receive the protections of the ADA, and that a public entity violates the statute if it places people with disabilities at serious risk of unnecessary segregation (*Olmstead*, 527 U.S. at 605; *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205 (D. Or. 2012)).

### *DOJ ADA Guidance and School Transition Services*

With the issuance of its Letter of Findings to Oregon in June 2012, [https://www.ada.gov/olmstead/documents/oregon\\_findings\\_letter.pdf](https://www.ada.gov/olmstead/documents/oregon_findings_letter.pdf), discussed in more detail below, the DOJ, the agency designated by Congress to enforce the ADA, clarified that the ADA and *Olmstead* apply to disability employment services including youth transition services. Youth with disabilities who are at serious risk of unnecessary segregation in sheltered workshops are protected by the ADA and

*Olmstead*, and public entities, including SEAs or LEAs, may be held accountable for creating that risk. For example, an SEA or LEA may be liable for the failure to make available transition services and supports, including caseworkers, school transition specialists, and VR counselors, to allow students with disabilities to prepare for and transition to CIE. SEAs and LEAs may also be liable for failing to allow students with disabilities to make informed choices about working in CIE prior to being referred for admission to segregated sheltered workshops.

## **ADA Systemic Reform Cases Pertinent to School Transition**

*Background: The School-to-Sheltered Workshop Pipeline*

Despite advancements in the civil rights of students with disabilities over the past three decades, a startling disparity remains between the post-secondary outcomes of students with and without disabilities (Sanford, Newman, Wagner, Cameto, Knokey, & Shaver, 2011). A significant number of students with disabilities leave school and directly enter segregated institutions, including sheltered workshops and facility-based day programs (Sanford et al., 2011). School-based transition programs and VR programs that do not collaborate with schools, or that commence collaboration only when students are about to exit school or after they exit school, bear some responsibility for this pipeline of students with disabilities transitioning directly from school to segregated institutionalized settings.

Some schools are officially licensed to employ students with disabilities at subminimum wages to engage in manual tasks. The U.S. DOL currently licenses over 31 school districts, schools, or school programs to pay subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA) (29 U.S.C. §214(c)) to approximately 2,000 students with disabilities (U.S. Department of Labor, 2018). These programs are known as School Work Experience Programs (SWEPs). Students in SWEPs typically perform piece-rate jobs where they are paid merely pennies on the dollar fulfilling private contracts during the school day.

Other students work in segregated adult sheltered workshops for one or more class periods per day, performing some of the same tasks as adults with disabilities. Many of those students are ultimately placed as adults in the same sheltered workshops where they worked during school transition.

Because of this training – indeed, cultivation – for life in a sheltered workshop while they are in school, it is not surprising that many students with disabilities follow a direct pipeline from school to sheltered workshops.

As discussed below, the ADA’s integration mandate and the passage of WIOA limit schools’ ability to continue to work directly with sheltered and subminimum wage employers; however, to date, SWEPs have not been eliminated.

### Youth “At Risk” of Unnecessary Segregation

As discussed previously, the ADA and *Olmstead* prohibit public entities from placing individuals, such as young people with intellectual and developmental disabilities (I/DD), at serious risk of unnecessary segregation (DOJ Civil Rights Division, 2011; *Olmstead*, 527 U.S. at 599). This means that public entities must support informed choices so that youth and students with disabilities are aware of their options before they are tracked into the pipeline from school to unnecessary segregation. A failure to support informed choices may include the lack of timely transition services to allow students with disabilities to understand and experience the benefits of work in an integrated setting prior to school exit. For example, an SEA or LEA may be liable for failing to make available caseworkers and school transition specialists, failing to collaborate and coordinate with VR agencies to prepare students with disabilities for CIE, or failing to help students with disabilities understand and experience work in an integrated setting prior to leaving school. By not offering students with disabilities informed choices about CIE before referring them to segregated sheltered workshops, SEAs and LEAs may be placing those students at serious risk of unnecessary segregation in violation of the ADA and *Olmstead*. Other factors that put students with disabilities at risk include:

- training students with disabilities in tasks similar to those performed in sheltered workshops,
- encouraging students with disabilities to participate in sheltered workshops, and/or
- routinely referring students to sheltered workshops as a post-secondary placement without offering them opportunities to try integrated employment.

The failure to support such meaningful and informed choices, and the serious risk of unnecessary segregation in sheltered workshops imposed upon students as a result, was found to be a violation of the ADA and *Olmstead* in three landmark cases resulting in three settlement agreements/consent decrees, discussed below (Interim Settlement Agreement, *United States v. Rhode Island and City of Providence*, No.

1:13-cv-00442 (D.R.I. filed June 13, 2013); Consent Decree, *United States v. Rhode Island*, No. 1:14-cv-00175 (D.R.I. filed Apr. 8, 2014); Settlement Agreement, *United States v. Oregon/Lane v. Kitzhaber*, No. 3:12-cv-00138-ST (D. Or. filed Sept. 8, 2015).

*DOJ Letter of Findings - U.S. v. Rhode Island and the City of Providence (2013)*

In its June 7, 2013 Letter of Findings, available at [https://www.ada.gov/olmstead/olmstead\\_enforcement.htm#one](https://www.ada.gov/olmstead/olmstead_enforcement.htm#one), the DOJ found that Rhode Island and the Providence Public School District violated the ADA and *Olmstead* when 85 students with I/DD were placed at serious risk of entering adult sheltered workshops. The case, as discussed below, resulted in a court-approved settlement agreement between the parties

The DOJ found that the Providence Public School District operated a sheltered workshop for students with I/DD at the Harold V. Birch Vocational Program at Mount Pleasant High School, known as the Birch program (DOJ Letter of Findings, 2013). The DOJ further found that students in the Birch program were not given meaningful choices and preparation for work in integrated settings or information and access to services and supports that would allow them to choose to work in integrated settings (DOJ Letter of Findings, 2013, pp. 13,15). As a direct consequence of the Birch program's cultivation, preparation, and direct referral of students with I/DD for sheltered workshop participation, those students were placed at risk of unnecessary segregation (DOJ Letter of Findings, 2013, p. 3).

The Birch program's school-based sheltered workshop was located in a wing of the high school and required students with I/DD to perform various mundane manual tasks, such as hand-sorting and assembling jewelry and buttons in exchange for subminimum or no wages, often under contract with the nearby adult sheltered workshop, Training Thru Placement (TTP) (DOJ Letter of Findings, 2013, pp. 1, 11). Birch students generally did not receive integrated work experiences, referrals to supported employment providers, trial work experiences, or tours of integrated employment (DOJ Letter of Findings, 2013, p. 9). Instead, Birch students were often given tours of TTP (DOJ Letter of Findings, 2013, p. 9). When Birch students completed their high school careers, many were referred by school staff and the developmental disability agency directly to TTP and other adult sheltered workshops (DOJ Letter of Findings, 2013, p. 9). As a result, in 26 years, only a handful of youth transitioned into individual supported employment upon leaving the school (DOJ Letter of Findings, 2013, p. 9). Most Birch students entered sheltered workshops,

usually TTP (DOJ Letter of Findings, 2013, p. 9). In fact, approximately one third of adults served by TTP were former students who came directly from the Birch program (DOJ Letter of Findings, 2013, p. 9).

This happened in spite of state law requiring Rhode Island school districts to provide individualized transition planning for youth with disabilities beginning at age 14 and encouraging the involvement of VR and developmental disabilities service providers in transition planning (R.I. Gen. Laws § 16-24-18(d), 2013). In fact, VR professionals were not involved with the school, did not participate in transition planning, and rarely, if ever, made contact with students at the school to enroll them in services (DOJ Letter of Findings, 2013, p. 9). Instead, vocational assessments were based almost exclusively on teacher observations at Birch or on paper/web-based assessments, rather than employment-related assessments (DOJ Letter of Findings, 2013, p. 9).

The DOJ further found that these actions and failures to act by the Providence school district, the developmental disability agency, and the VR agency placed Birch's students at serious risk of unnecessary segregation and violated the ADA by:

- preparing, acculturating, and training Birch students for lives in segregated sheltered workshops by requiring them to spend portions of each day in a school-based sheltered workshop;
- failing to introduce students with I/DD at Birch to information that would have allowed them to make meaningful and informed choices about post-secondary integrated employment;
- failing to provide transition and vocational planning services to Birch students, in contravention of state laws; and
- failing to provide VR services to Birch students as they were preparing to leave school (DOJ Letter of Findings, 2013, p. 8).

On June 13, 2013, the DOJ reached a court-enforceable Interim Settlement Agreement with the State of Rhode Island and the City of Providence to specifically address the Birch program and TTP (Interim Settlement Agreement, 2013). See <https://www.ada.gov/olmstead/documents/ri-providence-interim-settlement.docx>. By the time of the Interim Settlement, the City had closed the Birch program's school-based sheltered workshop, and the Settlement required the City to continue to prohibit sheltered workshop services for students with disabilities who were in the Birch program. For current and former Birch students, the Settlement required the State and City to provide transition services starting at age 14, including:

- a person-centered planning process, providing opportunities to access integrated work placements and information about post-secondary work in integrated settings;
- supported employment services beginning no later than age 18;
- benefits counseling;
- career development planning; and
- supported employment placements and services (Interim Settlement Agreement, 2013).

In addition, for transition-age youth with I/DD, the Settlement required transitional services and supports, including:

- instruction, community experiences, the development of employment, and other post-school adult living objectives;
- school-based preparatory experiences;
- career preparation and integrated work-based learning (WBL) experiences, such as site visits, job shadowing, soft skill and job skill development, internships, part-time employment, and summer employment;
- youth development and leadership, including training in self-advocacy, self-determination and conflict resolution, peer and adult mentoring, and, where appropriate, daily living skills; and
- connecting activities, including exposure to post-school educational and community services, transportation, benefits planning, and assistive technology (Interim Settlement Agreement, 2013a).

#### *DOJ Letter of Findings in U.S. v. Rhode Island (2014)*

On January 6, 2014, the DOJ issued another Letter of Findings, [https://www.ada.gov/olmstead/documents/ri\\_lof.docx](https://www.ada.gov/olmstead/documents/ri_lof.docx), in which it focused more broadly on the state employment system, including its SEA, the Rhode Island Department of Education (RIDE), finding that it had placed hundreds of students with disabilities at serious risk of unnecessary segregation in sheltered workshops and day programs (DOJ Letter of Findings, 2014). Specifically, the DOJ found that, among youth with I/DD who transitioned out of Rhode Island secondary schools between 2010 and 2012, only about five percent transitioned into jobs in integrated settings, even though many more of these youth were able to work in integrated employment and were not opposed to doing so (DOJ Letter of Findings, 2014, p. 27). Among other things, the DOJ found that Rhode Island's SEA had not set standards for school

districts about the timely introduction and coordination of transition services, including access to the VR and adult developmental disability service systems and opportunities to experience work in integrated settings prior to school exit (DOJ Letter of Findings , 2014, p. 28-29).

### Consent Decree in United States v. Rhode Island

On April 8, 2014, the DOJ successfully resolved its statewide investigation of Rhode Island's day activity service system through a court-ordered consent decree (Rhode Island Consent Decree, 2014). Under the consent decree, available at <https://www.ada.gov/olmstead/documents/ri-olmstead-statewide-agreement.docx>, the state is required to provide transition services to approximately 1,250 youth between the ages of 14 and 21 (Rhode Island Consent Decree, 2014). Specifically, state agencies are required to promote the implementation of a school-to-work transition planning process that includes specific timelines and benchmarks for all youth between the ages of 14 and 21 (Rhode Island Consent Decree, 2014, pp. 12, 15, 24). Youth in transition must receive integrated vocational and situational assessments, person-centered planning, and annual career development planning with school transition specialists, VR specialists, and developmental disabilities agency staff (Rhode Island Consent Decree, 2014, pp. 13, 24). Youth must receive meaningful options for post-secondary employment beginning no later than the school year in which they turn 18 (Rhode Island Consent Decree, 2014, p. 6). Specific milestones are required, including that all youth leaving school must be provided supported employment services (Rhode Island Consent Decree, 2014, pp. 5, 16). Additionally, individuals transitioning to employment must receive benefits planning and counseling (Rhode Island Consent Decree, 2014, p. 6).

Under the consent decree, youth must be provided individualized trial work experiences during school transition and an array of other services, including:

- instruction;
- community experiences;
- the development of employment and other post-school adult living objectives;
- school-based preparatory experiences;
- career preparation;
- integrated WBL experiences (such as site visits, job shadowing, soft skill and job skill development, internships, part-time employment, and summer employment);

- youth development and leadership (including training in self-advocacy, self-determination and conflict resolution skills, peer and adult mentoring, and, where appropriate, daily living skills); and
- connecting activities, including exposure to post-school educational and community services, transportation, and assistive technology to ensure that they have meaningful opportunities to work in the community after they exit school (Rhode Island Consent Decree, 2014, p. 9).

Also under the consent decree, RIDE was required to adopt an Employment First policy, making work in integrated employment settings a priority service option for the post-secondary employment goals of youth in transition (Rhode Island Consent Decree, 2014, p. 15). The state was also required to develop an outreach, in-reach, and education program that explains the benefits of supported employment and addresses families' concerns about participating in supported employment (Rhode Island Consent Decree, 2014, pp. 18-19). Moreover, the state was also required to create an Employment First task force of local stakeholders, advocacy organizations, parent and business leadership networks, individuals with I/DD, and family representatives (Rhode Island Consent Decree, 2014, p. 19).

Under the agreement, all supported employment placements must be integrated, pay competitive wages, and be for the maximum number of hours consistent with the individual's abilities, with a point-in-time average integrated work week of 20 hours and the goal of providing a normative 40-hour week of integrated employment and day activities combined (Rhode Island Consent Decree, 2014, pp. 9-11).

To ensure that any individuals choosing to enter a non-competitive or non-integrated employment setting (e.g., facility-based employment, group enclave, mobile work crew, internship, facility-based day program) were able to make an informed choice, a variance system was made available requiring, before entry:

- at least one vocational or situational assessment;
- a trial work experience;
- outreach, education, and support services; and
- a benefits counseling consultation (Rhode Island Consent Decree, 2014, p. 11).

Importantly, the state was required to implement interagency agreements among the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, the Office of Rehabilitation Services, and RIDE (Rhode Island Consent Decree, 2014, p. 23).

## *U.S. v. Oregon/Lane v. Brown (2015)*

In 2015, as discussed below, the DOJ and a private plaintiff class entered into a court-ordered settlement agreement to resolve litigation with the State of Oregon pertaining to its statewide employment service system for people with disabilities (Settlement Agreement, 2015).

### DOJ Letter of Findings

In its June 29, 2012 letter of findings, available at [http://www.ada.gov/olmstead/documents/oregon\\_findings\\_letter.doc](http://www.ada.gov/olmstead/documents/oregon_findings_letter.doc), the DOJ found that Oregon and its SEA had placed hundreds of students with I/DD each year at serious risk of unnecessary segregation in sheltered workshops (DOJ Letter of Findings, 2012). The DOJ specifically found that the state, via its VR counselors, service coordinators, and caseworkers, failed to offer transition-age students with I/DD viable alternatives to sheltered work, like the opportunity to obtain employment services in typical jobs in the community (DOJ Letter of Findings, 2012, pp. 14-18). It also found that students were not identified early enough, by either school transition specialists or VR counselors, as needing transition services (DOJ Letter of Findings, 2012, p. 17). The state had no formal plan to transition students to individual supported employment services in integrated work settings after school (DOJ Letter of Findings, 2012, p. 17). Specifically, the DOJ found that Oregon had not established the availability of caseworkers, VR counselors, and other supports in Oregon's secondary school system necessary to assist youth in transition to formulate career-related goals that include integrated employment (DOJ Letter of Findings, 2012, pp. 16-18). The DOJ also found that the Memorandum of Understanding between the SEA and VR agency regarding transition from school to work was ineffective, because it lacked specificity about how to achieve CIE and lacked clear benchmarks for transitioning students into supported employment (DOJ Letter of Findings, 2012, p. 17).

As a result of the ineffective state system, a referral from high school to a sheltered workshop was the most common outcome for transition-age youth who sought employment services (DOJ Letter of Findings, 2012, p. 17). Like in Rhode Island, some Oregon students with I/DD were even prepared for the tasks typically performed in sheltered workshops by performing mock-sheltered workshop activities in school or participating in adult sheltered workshops as part of the curriculum (DOJ Letter of Findings, 2012, p. 17). Some school districts in Oregon simulated workshop activities in order to transition students with disabilities into workshops, whereas other school districts placed students in adult sheltered workshops during the school day as part of their IDEA transition planning (DOJ Letter of Findings, 2012, p. 17).

And at least one sheltered workshop granted high school students with disabilities “scholarships” to work in the facility prior to transitioning from school (DOJ Letter of Findings, 2012, p. 17). In addition, many students were referred from schools to sheltered workshops for assessments to determine their eligibility for VR services (DOJ Letter of Findings, 2012, p. 17). The DOJ found that these actions placed students with disabilities at risk of unnecessary placement in sheltered workshops and thus violated the ADA (DOJ Letter of Findings, 2012, p. 17).

### Settlement in *United States v. Oregon/Lane v. Kitzhaber*

On September 8, 2015, the parties entered into a court-ordered settlement agreement. Recognizing the self-fulfilling prophecy that occurs when youth with disabilities are prepared for sheltered work while in school, under the settlement, available at [https://www.ada.gov/olmstead/documents/lane\\_sa.html](https://www.ada.gov/olmstead/documents/lane_sa.html), the Oregon Department of Education is required to improve employment-focused transition services by:

- allowing transition planning to begin as young as age 14, if deemed appropriate by a student’s IEP team;
- providing students information about, and opportunities to experience, supported employment services in integrated settings;
- prohibiting schools from including sheltered workshops as alternative placements and supplementary aides and services provided to students; and
- excluding mock sheltered workshop activities from school instructional curricula (Settlement Agreement, 2015, p. 14).

Under the terms of the settlement, Oregon also agreed to no longer purchase or fund sheltered workshop placements for transition-age youth and other new entrants, thus closing the front door to sheltered workshops and ending the school-to-sheltered-workshop pipeline (Settlement Agreement, 2015, p. 7).

In addition, over a span of seven years, Oregon agreed to provide at least 4,900 youth ages 14 to 24 with the employment services necessary for them to prepare for, choose, begin, and maintain integrated employment (Settlement Agreement, 2015, p. 11). At least half of the young people who receive employment services must receive an Individual Plan for Employment (IPE) (Settlement Agreement, 2015, p. 11).

Employment services must be individually planned and based on person-centered planning principles and evidence-based practices (Settlement Agreement, 2015, p.

5). The state agreed to implement strategies to encourage a goal of 20 hours per week of CIE (Settlement Agreement, 2015, p. 12).

The state also agreed to develop a broad-based professional development plan for transition services (Settlement Agreement, 2015, p. 14). The plan will include targeted technical assistance to agency personnel, school district personnel, and other practitioners, in addition to encouraging and facilitating Oregon school districts to continue and expand models of evidence-based transition practices (e.g., the Seamless Transition Model, Project Search, and the Youth Transition Program) to promote transition services so that youth can achieve CIE (Settlement Agreement, 2015, p. 14).

### *Olmstead Plans and Transition-Related Services*

In 2011, the DOJ issued a Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* A state or local government entity that creates and implements a comprehensive, effectively working *Olmstead* plan to shift away from reliance on institutional services towards providing community-based services for people with disabilities can use compliance with that plan as a defense to an ADA *Olmstead* enforcement action (DOJ Civil Rights Division, 2011, para. 20). An *Olmstead* plan is a state or local government entity's plan for providing services to individuals with disabilities in the most integrated setting appropriate to their needs, as is required by the ADA. An *Olmstead* plan must be comprehensive and effectively working and cannot merely "provide vague assurances of future integrated options or describe the public entity's general history of increased funding for community services and decreasing institutional populations" (DOJ Civil Rights Division, 2011, para. 20). It must reflect an assessment of the extent to which the public entity is providing services in the most integrated setting and provide concrete and reliable commitments to expand integrated opportunities (DOJ Civil Rights Division, 2011, para. 20). The plan must have specific and achievable timeframes and measurable goals, and there must be funding to support the plan (DOJ Civil Rights Division, 2011, para. 20).

In the context of employment service systems, a public entity cannot merely count the number or amount of supported employment services that it provides as the basis for an effective plan. Rather, it must demonstrate in what type of settings those services are provided or the success of those services in moving individuals from sheltered

workshops to integrated employment settings (DOJ Civil Rights Division, 2011, para. 20).

To be sufficient, the DOJ has stated that an *Olmstead* plan must include:

- concrete, reliable, and specific commitments for, and demonstrated success in, actually moving individuals from segregated sheltered workshops or other segregated settings to integrated employment settings, including demonstrated progress in
  - the number of individuals who transition from sheltered workshops to work in CIE with appropriate services and supports,
  - the length of tenure of individuals in integrated jobs,
  - the number of hours that such persons work in CIE,
  - the number of individuals who remain in segregated settings, and
  - the extent to which a person is afforded interaction with non-disabled persons (e.g. to the fullest extent possible) and individualization of services;
- specific and reasonable timeframes for employment of people with disabilities in integrated employment settings; and
- funding to support the *Olmstead* plan, including funding derived from reallocating existing service dollars (DOJ Civil Rights Division, 2011).

States across the country are working to formulate or revise *Olmstead* plans to meet ADA and *Olmstead* obligations. Importantly, how a state plans, administers, and funds its youth transition services, conducts interagency collaboration, and marshals resources to provide services, train staff, collect data, and measure outcomes to prevent unnecessary institutionalization of youth is an essential part of the state's *Olmstead* plan. In fact, schools, state VR agencies, developmental disability and other service agencies are charged with working together to ensure that a comprehensive statewide youth transition services plan that meets ADA and *Olmstead* requirements is in place. Moreover, as explained below, such interagency collaboration is also a core requirement of WIOA.

### *Related Cases and Legal Rulings*

In addition to settlement agreements, there have been several other recent legal developments relevant to the application of the ADA and *Olmstead* for youth with disabilities.

In the 2012 class action that preceded the DOJ settlement with Oregon, the United States District Court for the District of Oregon specifically addressed the application of the ADA and *Olmstead* to youth in transition (*Lane v. Kitzhaber*, 841 F. Supp. 2d at 1205-06). The court explicitly found that the ADA and *Olmstead* apply to youth with disabilities and held that the ADA's integration mandate extends to employment services and prohibits the unnecessary segregation, and risk of unnecessary segregation, of persons with disabilities, including youth with disabilities (*Lane v. Kitzhaber*, 841 F. Supp. 2d at 1206).

In 2017, the Supreme Court recognized in *Fry v. Napoleon Community School* that there is "some overlap in coverage" across the IDEA, the Rehabilitation Act, and the ADA and that "[t]he same conduct might violate all three statutes" (*Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 743, 756 (2017)). The *Fry* ruling clarified that the ADA (and *Olmstead* by implication) applies in the province of schools even though the IDEA and Rehabilitation Act also apply (*Fry v. Napoleon Community Schools*, 137 S. Ct. at 749-750). This is important because ADA claims need not go through the IDEA's administrative process but may be brought directly in federal court and on behalf of a class of students with disabilities (42 U.S.C. § 12133). The Court found that only ADA claims that could be remedied under the IDEA's FAPE requirement need to go through the administrative process (*Fry v. Napoleon Community Schools*, 137 S. Ct. at 756-757). To determine whether a claim seeks FAPE relief available under the IDEA, the Supreme Court recommended that courts ask whether the claim could have been brought: (1) if the alleged conduct occurred at a public facility outside of a school; or (2) if the claim could have been pursued if the alleged conduct happened to an adult at the school (*Fry v. Napoleon Community Schools*, 137 S. Ct. at 756). If the answer is "no" to both, then the complaint likely implicates the IDEA's FAPE requirement and should be pursued through the administrative process (*Fry v. Napoleon Community Schools*, 137 S. Ct. at 756). If the answer to either question is "yes," the claim may appropriately be pursued under the ADA and/or Rehabilitation Act directly in court on behalf of an individual or a class of individuals with disabilities (*Fry v. Napoleon Community Schools*, 137 S. Ct. at 756).

Among other things, the *Fry* decision reminds state and local education, state VR, and adult disability agencies that the IDEA is not the only federal statute applicable to youth in transition and that schools are responsible under all three statutes. This means that school systems, including SEAs and LEAs, must become familiar with the requirements of the ADA and *Olmstead*.

In fact, courts have specifically addressed the application of the ADA and *Olmstead* in the school context. In 2005, in *K.M. ex. rel. D.G. v. Hyde Park Century School District*, a New York federal court recognized that “unnecessary social isolation has been considered a form of actionable discrimination,” and held that a student with a disability’s isolation during the school lunch period was an actionable claim under the ADA (*KM Ex Rel. DG v. Hyde Park Cent. School Dist.*, 381 F. Supp. 2d 343, 360 (S.D.N.Y., 2005)). Likewise, in 2017, in *J.S., III v. Houston County Board of Education*, the Eleventh Circuit Court of Appeals held that the reasoning in *Olmstead* applies to a student’s removal from a regular education classroom to complete classwork with a teacher in a weight room for no purpose related to his education (*J.S., III v. The Houston County Board of Education*, No. 15-14306 (11th Cir. Oct. 2, 2017)).

In addition, in 2015, the DOJ issued a letter of findings to Georgia regarding its Georgia Network of Educational and Therapeutic Supports, finding that this separate school system for children with behavioral disabilities violated ADA/*Olmstead* integration requirements (DOJ Findings, 2015). In 2016, DOJ filed suit against Georgia (which, as of the date of this publication, is stayed) (*United States v. State of Georgia*, 2016). In October 2017, private plaintiffs representing a proposed class of 5,000 students with behavioral disabilities alleged to be unjustifiably segregated from non-disabled peers filed suit against Georgia claiming, among other things, violations of the ADA and *Olmstead* (*Georgia Advocacy Office (GAO) et. al. v. State of Georgia*, 1:17 cv 03999 (N. Dist. GA, 2017)). Thus, *Olmstead* integration requirements apply to school systems as well as behavioral health, vocational, and other government systems.

### *DOJ Guidance*

In 2016, the DOJ issued guidance available at [http://iel.org/sites/default/files/DOJ-Olmstead\\_Guidance\\_Employment.pdf](http://iel.org/sites/default/files/DOJ-Olmstead_Guidance_Employment.pdf). explaining that youth with disabilities who are at serious risk of unnecessary segregation in sheltered workshops are protected by the ADA and *Olmstead* and that public entities, including SEAs and LEAs, may be held accountable for creating that risk (United States Department of Justice, 2016). For example, the 2016 Guidance detailed how an SEA or LEA may be liable for failing to make transition services and supports available to students with disabilities and failing to work with VR agencies to help such students prepare for CIE.

On December 20, 2017, the DOJ rescinded the guidance. This rescission, however, had no impact on the force and effect of the already established law on the subject.

In rescinding the guidance, DOJ noted on its website that the withdrawal, “does not change the legal responsibilities of State and local governments under [T]itle II of the ADA, as reflected in the ADA, its implementing regulations, and other binding legal requirements and judicial precedent, including the U.S. Supreme Court’s *Olmstead* decision.” More specifically, the guidance’s withdrawal did not eliminate the applicability of the ADA’s integration mandate, the Supreme Court’s decision in *Olmstead v. L.C.*, court rulings including *Lane v. Kitzhaber* (*Lane v. Brown*)/ *United States v. Oregon*, or the DOJ’s Letters of Finding and consent decrees to employment services.

## Workforce Innovation and Opportunity Act

WIOA was signed into law on July 22, 2014 and has broad implications for people with disabilities, and in particular, youth with disabilities who can and want to work. The legislative history reveals that WIOA was advanced in part to eliminate “the disproportionate burden of unemployment and underemployment experienced by people with disabilities in our country... [and to] help a new generation of young people with disabilities to prepare for, obtain, and succeed in competitive integrated employment....” (Senator Harkin, 2014).

### Statute and Regulations

WIOA is the first reauthorization of the VR and workforce development systems in almost twenty years. WIOA expresses Congress’ clear intention that the VR and public workforce systems be designed and funded to assist youth with even the most significant disabilities to obtain CIE and to move away from segregated subminimum wage employment. The stated purpose of the statute is to ensure that “workers with disabilities have the supports and the opportunities to acquire the skills that they need to pursue in-demand jobs and careers” (State Vocational Rehabilitation Services Program, 2016). Indeed, according to WIOA regulatory guidance for state VR programs, “WIOA embodies the belief that with appropriate skills and supports, all individuals with disabilities can participate in the competitive workforce and achieve self-sufficiency” (State Vocational Rehabilitation Services Program, 2016). OSERS succinctly explained WIOA’s overarching objective: “Congress makes clear that youth with significant disabilities must be given every opportunity to receive the services necessary to ensure the maximum potential to achieve competitive integrated employment” (State Vocational Rehabilitation Services Program, 2016).

### **COMPETITIVE INTEGRATED EMPLOYMENT (CIE)**

Per WIOA, 29 U.S.C. § 705(5), “competitive integrated employment” means work at the minimum wage “that is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons” and provides opportunities for advancement.

Prior to WIOA, this term was recognized in policy and practice but had no statutory definition.

WIOA supersedes the country’s former public workforce law, the Workforce Investment Act (WIA) of 1998, and has four parts that directly impact students and youth with disabilities (listed with those pertaining to the VR system first):

- Title IV of WIOA, amending Title I of the Rehabilitation Act of 1973, pertains to the VR system and authorizes funding and requirements for state VR programs, including new definitions and standards;
- Title IV of WIOA, amending Title VI of the Rehabilitation Act of 1973, amends the State Supported Employment Services program to expand services for youth with the most significant disabilities and promote CIE;
- Section 511 of WIOA, a new section added to Title V of the Rehabilitation Act of 1973, imposes new limitations on the use of subminimum wages by 14(c) certificate employers including limitations on the payment of such wages to youth and adults with disabilities; and
- Title I of WIOA, supersedes titles I and II of the Workforce Investment Act of 1998 (WIA) and provides for a one-stop workforce delivery system that is accessible to all job seekers, including persons with disabilities including out-of-school youth (OSY).

### *Title IV of WIOA, Amendments to Title I of the Rehabilitation Act*

Among other things, WIOA's revisions to the Rehabilitation Act set forth a continuum of youth transition services and supports, including a new set of services called Pre-employment Transition Services (Pre-ETS) (29 U.S.C. § 733). Under WIOA, the VR agency, in collaboration with schools, has the authority to provide or arrange for the provision of Pre-ETS for all students with disabilities who are eligible or potentially eligible for VR services (29 U.S.C. § 733; 34 C.F.R. § 361.48, 2019). This is a significant expansion of the prior reach of VR services nationwide. In particular,

- each state must ensure that the VR program uses at least 15% of the state's Title I VR funds and any funds made available from state, local, or private funding sources for Pre-ETS for all students in need of such services (29 U.S.C. § 730(d)(1)); and
- each state's VR agency or DSU (e.g., the state VR bureau, division, or other organizational unit primarily concerned with VR) must provide pre-employment transition coordination, which may include VR participation at a student's IEP meetings, when invited (34 C.F.R. § 361.5(c)(13), 2019; 29 U.S.C. § 733).

Significantly, the WIOA revisions to the Rehabilitation Act, for the first time, provide for a federal definition of "competitive integrated employment" and changes to other significant definitions, providing further clarity that the desired outcome of VR services is work in typical places of employment at competitive wages (29 U.S.C. § 705(5)).

### *Youth Definitions: "Students with Disabilities" and "Youth with Disabilities"*

WIOA's revisions to the Rehabilitation Act focus VR services on two primary groups of young people with disabilities: (1) students with disabilities and (2) youth with disabilities.

The statute defines a "student with a disability" as an individual with a disability:

- who has a disability, either deemed eligible for special education and related services under Part B of the IDEA or considered to be a student with a disability under Section 504 of the Rehabilitation Act;
- who is in a secondary, post-secondary, or other educational program;

- who is 16 years old or younger (if the state elects a lower age for the receipt of pre-employment transition services); and
- who is not older than 21 years old (or the state's elected maximum age for IDEA transition service eligibility) (29 U.S.C. § 705(37)).

Notably, the definition of "student with a disability" is inclusive of not only secondary school students but also students who are in post-secondary education settings, homeschooled, or in non-traditional secondary school settings, including programs in the juvenile justice system (29 U.S.C. § 705(37)(B)). See also 34 CFR § 361.5(c)(51).

Under the WIOA definition, students with disabilities are eligible for Pre-ETS, the new set of services set forth under WIOA that are specifically designed to allow students to receive a meaningful introduction to work in competitive integrated settings prior to school exit (29 U.S.C. § 705(37)(b)). **For the first time, these students do not need to be found eligible for and enrolled in VR services or on an IPE to qualify for the services that comprise Pre-ETS.** This allows VR to cast a wider net to reach students who, without such services, may be placed at serious risk of unnecessary segregation in post-secondary settings in violation of the ADA and *Olmstead*.

In addition, WIOA defines "youth with a disability" as an individual with a disability who is not younger than 14 years old and not older than 24 years old (29 U.S.C. § 705(42)). Unlike students with disabilities, under the statute, youth with disabilities do not need to participate in an educational program to qualify for services (29 U.S.C. § 705(42)). In this regard, "youth with disabilities" constitute a larger group of young people than students with disabilities. "Youth with disabilities" includes the entire population of "students with disabilities" as well as youth who are no longer in the school system (or OSY), those who may not have been part of an educational program, and/or those who may have applied for and been found eligible for VR services.

The preamble to the final WIOA regulations clarified the distinction between a "student with a disability" and a "youth with a disability" under WIOA:

The age range in the definition of "youth with a disability" ... is broader than that for "student with a disability." Therefore, a student with a disability always meets the definition of a "youth with a disability" because a student with a disability has an age range that fits within the age range prescribed by the definition of a "youth with a disability." However, a

youth with a disability may not necessarily meet the definition of a “student with a disability.” A youth with a disability could also be a student with a disability if the individual meets the age range in the definition of “student with a disability” and participates in an educational program .... On the other hand, a youth with a disability who is outside the age range for a student with a disability or is not participating in an educational program does not meet the definition of a “student with a disability.” (State Vocational Rehabilitation Services Program, 2016, p. 55686)

It is important to note here that Title I of WIOA, which is discussed in further detail in Section IV and V of this Guide, separately addresses the requirements and services available to OSY.

### Continuum of WIOA VR Transition Services

WIOA sets forth a continuum of transition services available within the VR system that includes: (1) Pre-ETS, (2) group transition services, and (3) individualized transition services. **This continuum is not to be construed as concrete steps or levels that an individual with a disability must pass through to qualify ultimately for access to CIE.** Rather, these services are designed to be different from one another and available to youth and students with disabilities based on their individualized needs, all with the shared goal of early and meaningful introduction to CIE. Youth and students with disabilities, however, may gain access to the VR system with or without first receiving transition services. The continuum of WIOA VR transition services includes the following:

- Pre-ETS are available only to “students with disabilities.” Eligible students need not apply for or be found eligible for VR services in order to receive Pre-ETS (29 U.S.C. § 733; 34 C.F.R. § 361.48(a), 2019);
- Group transition services are available to both students and youth with disabilities. An application for VR services and an IPE is not required (29 U.S.C. § 723(b)(7); 34 C.F.R. § 361.49(a)(7), 2019); and
- Individualized transition services are available to all individuals who apply for and are found eligible for VR services and are placed on an IPE (29 U.S.C. § 723(a); 34 C.F.R. § 361.48(b), 2019).

## Pre-ETS

Pre-ETS must be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for VR services (29 U.S.C. § 733). Built into WIOA's Pre-ETS mandate is the requirement that the VR system coordinate with LEAs to make Pre-ETS available to students with disabilities.

**The purpose of Pre-ETS is to give students with disabilities a meaningful and early introduction to work in CIE settings prior to school exit.** Through Pre-ETS, a student with a disability is assisted in identifying his or her career interests as early as possible during secondary school with the expectation that such interests will be further explored and developed through additional transition services (34 C.F.R. § 361.48(a), 2019). Pre-ETS may begin when a student makes a request or when he or she is recommended for one or more Pre-ETS and documentation of the student's disability is provided to the VR agency (34 C.F.R. § 361.48(a), 2019; 29 U.S.C. § 733).

Pre-ETS include the following activities, all of which are required to be provided or arranged to be provided by the DSU in collaboration with LEAs:

- job exploration counseling;
- WBL experiences;
- counseling on opportunities for enrollment in comprehensive transition or post-secondary education programs/institutions of higher education;
- workplace readiness training to develop social and independent living skills; and
- instruction in self-advocacy (including person-centered planning), which may include peer mentoring from individuals with disabilities working in CIE (34 C.F.R. § 361.48(a)(2), 2019).

Importantly, Pre-ETS and Pre-ETS coordination can be paid for with funds reserved under the VR State Grants Program, requiring at least 15% of VR State Title I monies to be set aside and any other funds made available from state, local, or private funding sources (29 U.S.C. § 730(d)(1)).

In addition to the above required activities, states are authorized to use funds that remain after the provision of required Pre-ETS to provide authorized services such as:

- implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

- developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in post-secondary education experiences, and obtain, advance in, and retain CIE;
- providing instruction to VR counselors, school transition personnel, and other persons supporting students with disabilities;
- disseminating information about innovative, effective, and efficient approaches to achieve CIE for students with disabilities;
- coordinating activities with transition services provided by LEAs;
- applying evidence-based findings to improve policy, procedure, practice, and preparation of personnel to better achieve CIE;
- developing model transition demonstration projects;
- establishing or supporting multistate or regional partnerships involving states, LEAs, DSUs, developmental disability agencies, private businesses, or other participants; and
- disseminating information and strategies to improve transition to post-secondary activities of individuals who are members of traditionally unserved and underserved populations (34 C.F.R. § 361.48(a)(3), 2019).

Finally, under WIOA, states are required to facilitate pre-employment transition coordination to ensure linkages are made between education, VR, developmental disability, and other service agencies to effectuate Pre-ETS (29 U.S.C. § 733).

#### *Pre-Employment Transition Coordination*

WIOA requires that the VR system provide pre-employment transition coordination with both the education and Medicaid-funded service systems, including developmental disability agencies (29 U.S.C. § 733). VR counselors must work in concert with educational agencies, job training providers, Medicaid service providers, service providers for individuals with developmental disabilities, centers for independent living, housing and transportation authorities, workforce development systems, and businesses and employers (34 C.F.R. § 361.48(a)(4), 2019).

As part of pre-employment transition coordination, Section 113(d) of the Rehabilitation Act now requires that VR counselors:

- attend IEP meetings, when invited;
- work with local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities;

- work directly with schools to coordinate and ensure the provision of Pre-ETS; and
- attend person-centered planning meetings for students with disabilities receiving services under title XIX of the Social Security Act (Medicaid services), when invited (29 U.S.C. § 733(d)).

## **Group Transition Services**

Under WIOA, group transition services are available to both students with disabilities and youth with disabilities who may “not yet have applied or been determined eligible for VR services” (29 U.S.C. § 723(b)(7)). Group transition services include, but are not limited to:

- group tours of universities and vocational training programs;
- employer or business site visits to learn about career opportunities;
- career fairs, coordinated with workforce development agencies and employers, to facilitate mock interviews and resume writing; and
- other general services applicable to groups of students with disabilities and youth with disabilities (34 C.F.R. § 361.49(a)(7), 2019).

For example, students and youth with disabilities may attend “reverse career fairs,” facilitated by a VR counselor, in which employers visit a transition program that includes a group of students with disabilities to market and discuss future employment options.

Many people in the business and disability communities, including employers, parents, families, and youth with disabilities, may be unaware that group transition services are a VR-funded service provided regardless of students’ eligibility for VR or that a VR counselor can facilitate career fairs that are coordinated with workforce development entities and employers.

## **Individualized Transition Services**

Under WIOA, individualized transition services are available to students and youth with disabilities who have been found eligible for VR services (29 U.S.C. § 723(a)). To be eligible for VR services, an individual must have a physical or mental impairment that constitutes or results in a substantial impediment to employment and requires VR

services to prepare for, secure, retain, advance in, or regain employment (29 U.S.C. § 722(a)(1); 29 U.S.C. § 705(20)(a)). Individuals that receive Supplemental Security Income or Social Security Disability Insurance are presumed eligible for VR services (29 U.S.C. § 722(a)(3)(A)).

Students with disabilities who need individualized VR services must apply and be determined eligible for VR and be assigned a VR counselor to develop an IPE (29 U.S.C. § 722). VR services can assist students with disabilities in “preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice” (34 C.F.R. § 361.48(b), 2019). These services can assist students and youth with disabilities to obtain job search, job development, job coaching, and job placement services, as well as supported employment services, rehabilitation technology, referral to the statewide workforce development system, interpreter services, reader services, personal assistance services, and orientation and mobility services (34 C.F.R. § 361.48(b), 2019).

The goal of Pre-ETS, group transition, and individualized transition services under WIOA is to gain the skills and knowledge to obtain CIE, regardless of the severity of the student’s disability. Accordingly, the definition of CIE, and accompanying definitions, are critically important to understanding WIOA’s requirements.

### WIOA Section 404 Definitions

WIOA’s revisions to the Rehabilitation Act have clarified several key definitions.

**CIE:** As explained earlier, one of WIOA’s most critical definitions is the definition of CIE. Since January 22, 2001, the Rehabilitation Services Administration (RSA), (a subagency of the U.S. Department of Education charged with implementing the Rehabilitation Act) has defined “employment outcome” to exclude work in sheltered workshops and other segregated settings (State Vocational Rehabilitation Services Program, 2001). Instead, VR services have been required to lead people with disabilities to “competitive employment . . . in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice” (34 C.F.R. § 361.5(b)(16), 2019; 29 U.S.C. §§ 720(a)(1), (a)(3)(B); RSA, 2005). In other words, for more than 15 years preceding WIOA, it has been RSA’s policy and practice to eschew segregated, sheltered employment over CIE as the preferred outcome for people with disabilities in the VR system.

WIOA introduces a new definition, “competitive integrated employment,” that consolidates and revises the Rehabilitation Act’s previous use of the terms “gainful employment,” “competitive employment,” and “integrated setting.” The new definition also adds “opportunities for advancement” as a required criterion, one pertinent to whether a job is typical of the jobs afforded to non-disabled individuals in the marketplace (29 U.S.C. § 705(5)).

Under WIOA, CIE includes employment:

- at minimum wage (and not less than the customary rate paid to employees without disabilities performing similar work) and with eligibility for the same benefits as non-disabled employees;
- in integrated settings where individuals interact with individuals without disabilities to the same extent as others in comparable positions; and
- that provides opportunities for advancement similar to non-disabled individuals in similar positions (29 U.S.C. § 705(5); 34 C.F.R. § 361.5(c)(9), 2019).

Importantly, group-supported employment or enclave employment cannot meet the definition of CIE for the purpose of the VR program.

The WIOA definition of CIE is consistent with what is recognized under the ADA to be “the most integrated setting appropriate” for people with disabilities to receive employment services and interact to the fullest extent possible with co-workers, customers, and peers without disabilities.

[Integrated Settings vs. Extended Employment:](#) Under WIOA, CIE is work in an “integrated setting” (34 C.F.R. § 361.5(c)(32), 2019). For a VR placement to be counted as an employment outcome in CIE, it must be in an integrated setting or a place: (1) typically found in the community; (2) where the employee with a disability interacts with other employees within the particular work unit and the entire work site, and, as appropriate to the work being performed, other people without disabilities (like customers, vendors, etc.) to the same extent as employees without disabilities in comparable positions would interact with such persons (34 C.F.R. § 361.5(c)(32), 2019). Moreover, in order for a setting to be integrated, interactions with supervisory personnel or direct service providers cannot substitute for required interaction with peers, coworkers, and customers without disabilities (34 C.F.R. § 361.5(c)(32), 2019).

Since the 2005 issuance of the RSA Technical Assistance Circular 06-01, VR counselors have been encouraged to look at “factors” to determine whether a placement is in an integrated setting and, therefore, counts as an employment outcome (RSA, 2005). ED generally, and RSA specifically, have long considered several factors that *generally* would result in a business being considered “not typically found in the community,” including:

- whether the positions are funded through Javits-Wagner-O’Day (JWOD) Act contracts or state purchase programs,
- whether the positions pay subminimum wages under the FLSA, and
- whether the workplace imposes a mandated direct labor-hour ratio of persons with disabilities (RSA, 2005).

It is the responsibility of the VR agency to take these factors into account when determining if a position in a particular work location is in an “integrated setting” within the meaning of the statute (RSA, 2005; Office of Special Education and Rehabilitative Services, 2017).

By contrast, “[e]xtended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act” (34 C.F.R. § 361.5(c)(18), 2019). By definition, “extended employment” under WIOA is not an integrated setting and thus cannot count as an employment outcome within the VR system (29 U.S.C. § 705(4)(L); 29 U.S.C. § 705(5)).

### **SECTION 14(c) OF FLSA**

Section 14(c) authorizes the Secretary of Labor to issue special wage certificates to employers of “handicapped workers” whose earning or productive capacities are impaired for the work to be performed. A certificate allows the employer to pay workers with disabilities less than the federal minimum wage.

## Supported Employment Services “Extended Up to 24 Months” and Up to 4 Years for Youth with the Most Significant Disabilities

Supported employment services are a cornerstone of the VR system. Supported employment is

competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities. (34 C.F.R. § 361.5(c)(53)(i), 2019).

Supported employment services are

ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment (34 C.F.R. § 361.5(c)(54), 2019).

Supported employment services and supports allow individuals, including youth, with the most significant disabilities to achieve placement in CIE (29 U.S.C. § 705(38)). Prior to WIOA, individuals with disabilities who were eligible for VR services and placed on an IPE were allowed to receive supported employment services for up to 18 months as they worked toward an employment outcome in CIE. WIOA extended that time frame from 18 months to up to 24 months (and beyond in special circumstance if the eligible individual and the rehabilitation counselor jointly agree)—a significant expansion (34 C.F.R. § 361.5 (c)(54)(iii), 2019). Moreover, supported employment services may be utilized as part of extended services (or ongoing support services and other appropriate services) for youth with the most significant disabilities for a period up to four years or until the youth reaches the age of 25. (29 U.S.C. § 709(c); 29 U.S.C. § 795i(b)).

An individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment or who is employed in an integrated setting working on a short-term basis to achieve competitive integrated employment will be considered to have achieved an

employment outcome, including customized employment, in supported employment when:

1. the individual has received up to 24 months of supported employment services or the extended period of services agreed to by the counselor and individual has concluded;
2. the individual has transitioned to extended services provided by either the DSU for youth with the most significant disabilities, or another provider, consistent with the provisions of §§ 363.4(a)(2) and 363.22;
3. the individual has maintained employment and achieved stability in the work setting for at least 90 days after transitioning to extended service; and
4. the employment is individualized and customized consistent with the strengths, and the employment abilities, interest, and informed choice of the individual. (34 C.F.R. § 363.54, 2019).

### Customized Employment

WIOA's revisions to the Rehabilitation Act incorporate a definition of "customized employment" into federal law for the first time, allowing customized employment to be a VR reimbursable service nationwide. Under WIOA, customized employment means competitive employment for an individual with a significant disability that is:

- based on an *individualized* determination of the unique strengths, needs, and interests of the individual with a significant disability;
- designed to meet both the specific abilities of the individual and the business needs of the employer; and
- carried out through flexible strategies such as
  - job exploration;
  - customizing a job description based on employer needs or previously unmet or unidentified employer needs;
  - developing a set of job duties, work schedule, and job arrangement, including specifics of supervision (like performance evaluation and review) and determining job location using a professional representative chosen by the individual; and
  - self-representation to facilitate job placement and providing services and supports at the job location (34 C.F.R. § 361.5(c)(11), 2019; WINTAC, 2017a).

The Workforce Innovation Technical Assistance Center (WINTAC) has created an important technical assistance resource for understanding customized employment titled, [The Essential Elements of Customized Employment for Universal Application](#).

*Title IV of WIOA, Amendments to Title VI of the Rehabilitation Act*

### New Section 511 of WIOA: Limitations on the Payment of Subminimum Wages

Title IV of WIOA includes a new Section 511 which sets forth a series of new limitations on the placement of youth with disabilities in jobs with employers who hold special wage certificates pursuant to Section 14(c) of the FLSA (29 U.S.C. § 794g). These new requirements represent a significant change in practice for the education, VR, and disability service systems.

WIOA Section 511's limitations on the use of subminimum wages are accompanied by important rules of construction, found in Section 511(b), that define the parameters under which such provisions should be construed by the reader (29 U.S.C. § 794g(b)(1)(A)-(B)). These rules of construction were Congress' way of preventing any misunderstanding or misapplication of the newly imposed limitations on the payment of subminimum wages. Indeed, the need for such a provision reflects the difficult terrain that Congress navigated in formulating the limitations: it needed to recognize the payment of subminimum wages expressly in the statute in order to then impose limitations on them.

Nevertheless, since subminimum wages had only previously been recognized in federal law under Section 214(c) of the FLSA (and never before under the Rehabilitation Act), the introduction of proposed Section 511 caused considerable concern from commentators to the rule who feared that it would solidify the presence and availability of subminimum wage employment as a permanent fixture of the vocational rehabilitation system, inadvertently promoting, rather than limiting, its use. However, the rules of construction explicitly and unambiguously prohibit interpreting the statute in this way. According to the statute, nothing in Section 511 shall be construed to change WIOA's abiding purpose to empower individuals with disabilities to maximize opportunities for CIE (and by implication, to minimize the exposure of adults and youth to unjustified or unnecessary segregation in subminimum wage employment) (29 U.S.C. § 794g(b)(1)(A)-(B)). Moreover, the statute makes clear that Section 511's limitations are not intended to preference employment compensated at a subminimum wage as an "acceptable vocational

rehabilitation strategy or successful employment outcome” (29 U.S.C. § 794g(b)(1)(A)-(B)). In this regard, Section 511 grapples directly with the present reality of disability employment (including the current presence and prevalence of subminimum wage employment generally and the school-to-sheltered workshop pipeline specifically). The rules of construction remind us that Section 511 was intended by Congress to provide for a paradigmatic shift toward CIE as the default for youth with disabilities.

In addition, the regulations implementing the statutory rules of construction require that Section 511’s limitations on the use of subminimum wage be read to be consistent with FLSA, something that is relevant to Section 511’s enforcement by the DOL, as discussed below (34 C.F.R. § 397.3(c), 2019).

### Section 511 Requirements Before Youth May Be Referred to a Sheltered Workshop

Under Section 511(a), 14(c) certificate-holders are prohibited from paying a subminimum wage to any youth age 24 or younger unless the youth has completed three primary requirements:

1. the youth has received IDEA transition services or Pre-ETS under WIOA; and
2. the youth applied for VR services, and
  - o was found ineligible; or
  - o was found eligible and had an IPE, worked toward an IPE employment outcome for a reasonable period of time without success, and the VR case was closed; and
3. the youth received career counseling, including information and referrals, to federal and state programs and other resources in the individual’s geographic area. (29 U.S.C. § 794g(a)).

Each of these significant new requirements is discussed below.

#### **1. Receipt of IDEA Transition Services or Pre-ETS through Interagency Coordination and Agreement**

Section 511(a) prohibits a 14(c)-certificate holder from paying a youth with disabilities subminimum wages unless, among other things, it is verified that the youth has received IDEA transition services or Pre-ETS. As previously mentioned, IDEA transition services are part of the IDEA’s mandate for “special

education and related services,” including, among other aspects, supported employment services. LEAs are responsible for providing (and funding) any transition services that are part of the prescribed special education and related services set forth in a student’s IEP. Oftentimes, such services may be related to a student’s course of study, curriculum, instruction, and post-secondary employment goals. WIOA reminds us that nothing under Title I of the Rehabilitation Act “shall be construed to reduce the obligation under the IDEA to provide [transition services]” (29 U.S.C. § 721(c); 34 C.F.R. §361.22(c), 2019).

Nevertheless, Pre-ETS and transition services are both VR services under the VR program and special education or related services under IDEA (Weil, 2016; 34 CFR § 300.154). For an eligible youth with disabilities who is on an IEP (and his or her family, school personnel, and/or VR counselor), this may cause confusion about which system is most appropriate to serve the student’s transition needs. WIOA has provided a salient solution to this problem through its requirements for interagency cooperation.

To decide which agency is responsible for providing and funding Pre-ETS or transition services, states are required to enter into formal interagency agreements that describe concrete criteria for determining the statewide responsibilities of the VR system and the SEA (and in turn, the SEA’s coordination of LEAs statewide). To this end, the VR services portion of the Unified or Combined State Plan must include information on a formal interagency agreement between the VR system and the SEA.

At a minimum, this formal interagency agreement must provide for six core elements:

- consultation and technical assistance by the VR system to assist education agencies in planning for transition of students with disabilities to post-school activities;
- transition planning by VR staff and educational agency personnel that facilitates the development and implementation of IEPs (and by implication, IPEs and Individual Support Plans (ISPs), where applicable);
- the roles and responsibilities, including financial responsibilities **of each agency** (including determining “State lead agencies” and the qualified personnel responsible for Pre-ETS and transition services);

- procedures for outreach to and identification of students with disabilities who need transition services and Pre-ETS as early as possible during the transition planning process;
- coordination necessary to satisfy the documentation requirements under the statute with regard to students and youth with disabilities who are seeking subminimum wage employment; and finally
- assurance that neither the SEA nor the LEA will enter into a contract or other arrangement with an entity for the purpose of operating a program under which a youth with a disability is engaged in work compensated at subminimum wage (34 C.F.R. § 361.22(b), 2019).

## **2. Working Toward an IPE Employment Outcome “for a Reasonable Period of Time Without Success”**

In addition to Section 511’s requirement that a youth receive IDEA transition services or Pre-ETS, the youth must have applied for VR services and (1) been found ineligible or (2) been found eligible, **have worked toward an IPE employment outcome for a reasonable period of time without success**, and have had his or her VR case closed (29 U.S.C. § 794g(a)(2)(B)).

The purpose of this requirement is to prevent youth from being introduced to subminimum wage employment without first having received meaningful access to the VR system. The regulations implementing WIOA define the parameters for what working “toward an IPE employment outcome for a reasonable period of time without success” means for youth with disabilities on an IPE. WIOA’s implementing regulations interpret “reasonable period of time” as consistent with the vocational needs of the individual and the anticipated length of time to complete services on a particular IPE (34 C.F.R. § 397.20(b)(3)(i), 2019). Whether something is a “reasonable period of time without success” is a highly individualized inquiry. However, for an individual whose specified employment goal is in “supported employment,” a reasonable period of time is defined as “up to 24 months” unless special circumstances warrant otherwise and the individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment. (34 C.F.R. § 397.20(b)(3)(ii), 2019). Moreover, the regulations require that the youth have been given “a reasonable period of time without success” despite working toward the employment outcome with “reasonable accommodations and appropriate supports and services, including supported employment services and

customized employment services” (34 C.F.R. § 397.20(a)(2)(ii)(B), 2019). As mentioned earlier, supported employment services may be utilized as part of extended services (or ongoing support services and other appropriate services) for youth with the most significant disabilities for a period up to four years or until the youth reaches the age of 25. (29 U.S.C. 709(c)).

### **3. Career Counseling and Information and Referral (CCIR) for Youth with Disabilities**

The third major element of Section 511(a) is the requirement that youth with disabilities must have received CCIR to federal and state programs and other resources in the individual’s geographic area) **before they are permitted to receive subminimum wages.** Such federal and state programs must offer employment-related services and be designed to enable the individual “to explore, discover, experience, and attain competitive integrated employment” (34 C.F.R. § 397.20(a)(3)(i), 2019). This requirement applies to youth with disabilities regardless of the outcome of their application to the VR system.

WIOA requires that such CCIR services be provided by the VR agency or DSU in a way that facilitates independent decision-making and informed choice (34 C.F.R. § 397.20(a)(3)(ii)(A), 2019). CCIR must be provided to a youth the state knows is seeking subminimum wage employment within 30 days of a determination of ineligibility or the closure of the VR file (34 C.F.R. § 397.20(a)(3)(ii)(C), 2019). Importantly, the statute and regulations require information and referral services pertaining to CIE to be provided by a source without a vested interest in the outcome of the services being provided. (29 U.S.C. § 794g(c)(1)(B); 34 C.F.R. § 397.20(a)(3)(ii), 2019). Accordingly, CCIR services cannot be provided by a 14(c) certificate holder, cannot be compensated at subminimum wage, and cannot directly result in subminimum wage employment (29 U.S.C. § 794g(a)(2)(B)(ii)(II)).

#### Documentation Requirements for Youth “Who Are Known” to VR Wishing to Enter Subminimum Wage Employment

As detailed in Table 4 of this guide, the WIOA Section 511 requirements must be scrupulously documented by state systems and such documentation must be provided to the youth with a disability. The VR program must obtain documentation of the completion of pre-employment transition services or transition services. and such documentation must be provided to the youth as

soon as possible or no later than within 45 days of completion or within 90 days in extenuating circumstances. The youth must also receive documentation of the completion of CCIR as soon as possible but no later than 45 days of completion or 90 days in extenuating circumstances.

Importantly, this documentation requirement only applies to “a youth known by the designated state unit to be seeking employment at subminimum wage” (34 C.F.R. § 397.20(a)(3)(ii)(C), 2019). What it means to be a youth “known by the designated state unit,” however, remains undefined in WIOA’s statute or regulations. However, an important part of the required interagency agreement between state agencies to effectuate Section 511 is a process to identify and provide outreach to students with disabilities who are in need of transition services and Pre-ETS as early as possible during the transition planning process (34 C.F.R. § 361.22(b)(4), 2019). State agencies, including VR, education, and developmental disability agencies, must come to an agreement about youth “who are known to be seeking employment at subminimum wage” in their system and develop processes for early identification and tracking of such students. In addition, the SEA and VR or DSU must agree about the purpose, eligibility, and customary provision of Pre-ETS, technical assistance to educational agencies on Pre-ETS, and coordination between the education agencies and VR regarding the documentation requirements for Section 511.

In order to effectively meet the Act’s early outreach and documentation requirements, State VR, education, developmental disability and other service agencies must identify the target population of secondary students with disabilities who are routinely placed at serious risk of unnecessary segregation in post-secondary subminimum wage employment. They must define that population in the required interagency and data sharing agreements as “youth who are known to be seeking employment at subminimum wage.” For Section 511 to be effective at preventing unnecessary segregation, this population should not be narrowly construed, or defined as only those youth who have received written plans or referrals to a sheltered workshop. Youth who may be susceptible to long-term placement in subminimum wage employment include those who have engaged in transition-related activities in subminimum wage employment (or performed in-school training and activities consistent with the tasks performed for subminimum wage employers), who have visited subminimum wage employers, who have had internships, mentorships,

training or vocational assessments with subminimum wage employers, or who lack a post-secondary employment goal. Therefore, these youth should be considered known to be seeking employment at subminimum wage.

### Individuals with Disabilities Currently Receiving Subminimum Wages Regardless of Age Must Be Provided CCIR and Information About Self-Advocacy, Self-Determination, and Peer Mentoring Training Opportunities

Section 511(c) also imposes new limitations on individuals, **regardless of age**, receiving subminimum wages. Pursuant to such requirements, the VR system is responsible for providing individuals who receive subminimum wages with CCIR at specified intervals. Under Section 511(c), individuals who have received subminimum wages for years, even decades at a time, are now assured to receive services designed to give them a meaningful choice to work in CIE. Specifically, once every six months for the first year of an individual's employment at subminimum wages and annually thereafter, the DSU is required to provide:

- CCIR to federal and state programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience and attain CIE; and
- CCIR delivered in a manner that facilitates independent decision-making and informed choice as the individual makes decisions regarding employment and career advancement (29 U.S.C. §§ 794g(c)(1), (2)).

Specifically, the CCIR set forth by Section 511(c) must be provided in a manner that is both understandable to the individual and that facilitates informed choice, not only about CIE, but also "career advancement, particularly with respect to supported employment, including customized employment" (34 C.F.R. § 397.40(a)(3), 2019). The DSU must provide documentation to the individual that CCIR has been completed as soon as possible, but no later than 45 calendar days after completion or 90 calendar days, if additional time is necessary due to extenuating circumstances (34 C.F.R. § 397.40 (d), 2019).

Moreover, under Section 511(c), subminimum wage employers are required to inform individuals with disabilities of "self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area" every six months for the first year of subminimum wage employment and annually thereafter (29 U.S.C. § 794g(c)(1)(B), (c)(2)). As discussed in more detail below, these available training opportunities must be provided by an entity that does not have any

financial interest in the individual's employment outcome, under applicable federal and state programs or other sources (29 U.S.C. § 794g(c)(1)(B)).

The individuals with disabilities who are eligible for CCIR regardless of age under Section 511(c) are defined as individuals "who are known by the designated state unit to be employed by an entity...at a subminimum wage level" (34 C.F.R. § 397.40(a)(1), 2019). According to the applicable regulations, a DSU "may know of an individual with a disability...through the vocational rehabilitation process, self-referral, or by referral from the client assistance program, another agency, or [a 14(c)] entity" (34 C.F.R. § 397.40(a)(2), 2019). In addition, "[a]n individual with a disability may become "known" to the designated state unit through self-identification by the individual with a disability, referral by a third-party (including a [14(c)] entity), through the individual's involvement with the vocational rehabilitation process, *or any other method*" (34 C.F.R. § 397.40(c)(2), 2019).

### WIOA, Informed Choice & Opting-Out of Services

WIOA's implementing regulations require individuals choosing employment services and placements to have "informed choice" within the VR system. VR must use practices to ensure such informed choice including, among other things, assisting applicants and recipients of VR services to make informed choices about the "[e]mployment setting and the settings in which [vocational rehabilitation] services will be provided," including "[the] [d]egree to which services are provided in integrated settings;" "[o]utcomes achieved by individuals working with [certain] service providers, to the extent that such information is available;" and "opportunities for individuals to visit and experience various work and service provider settings" (34 C.F.R. § 361.52(a)-(d), 2019). Moreover, as discussed more fully in Section III of this guide, WIOA imposes requirements on: (1) the VR and education systems to document when youth with disabilities, or their parents or guardians, refuse, through informed choice, to participate in Pre-ETS or transition services; and (2) the VR system to document when individuals with disabilities of all ages who receive subminimum wages, or their representatives, refuse, through informed choice, to participate in CCIR services (34 C.F.R. § 397.10(a)(2), 2019; 34 C.F.R. § 397.40(d)(3), 2019). Under WIOA, even if a youth with a disability refuses Pre-ETS, and this refusal is documented appropriately, such persons are prohibited from receiving subminimum wages from a 14(c) entity because they have not met the requirements of Section 511 (Limitations on Use of Subminimum Wage, 2016).

## Self-Advocacy, Self-Determination, and Peer Mentoring Training

A critically important part of informed choice is the ability for an individual with a disability to make choices that are meaningful. To do so, he or she must be able to access information and resources necessary to decide a future path to employment that is based on objective, concrete, and reliable information and experiences. This includes making decisions about future employment that are informed by the experiences of mentors and peers who are already working in CIE.

Under Section 511(c)(1)(2), “employers” (including 14(c) certificate holders) must provide all current 14(c) employees, with information about local self-advocacy, self-determination and peer mentoring training opportunities within the first six months of employment and annually thereafter. One important exception to this rule is that employers that meet WIOA’s definition of a small business are exempted from directly providing the information about local self-advocacy, self-determination, and peer mentoring opportunities, and instead are able to satisfy the requirements of 511(c) by referring individuals to VR (29 U.S.C. § 794g(c)(3); 34 C.F.R. § 397.40(b)(1), 2019).

The training opportunities may be provided “under applicable Federal or state programs or other sources, but must not be provided by an entity that has any financial interest in the individual’s employment outcome” (29 U.S.C. § 794g(c)(1)(B)). ED has interpreted this provision to mean that 14(c) entities are prohibited from providing local self-advocacy, self-determination, and peer mentoring services because they have a financial self-interest (34 C.F.R. § 397.40(b)(2), 2019). The Wage and Hour Division of the DOL has adopted ED’s interpretation in DOL Field Assistance Bulletin No. 2016-2 (Weil, 2016). As such, VR or a DSU may contract with other entities, *i.e.*, other public and private service providers, as appropriate, to fulfill the CCIR requirements (including self-advocacy, self-determination, and peer mentoring), but the contractor performing the services on behalf of the DSU may not be an entity holding a special wage certificate under Section 14(c) of the FLSA (29 U.S.C. 214(c); 34 C.F.R. § 397.40(e), 2019).

It is important to keep in mind that Section 511(c) is not the only place in the WIOA statute or regulations containing requirements that pertain to self-advocacy and peer mentoring services. As discussed previously, such services are also required Pre-ETS for students with disabilities prior to entering subminimum wage employment.

Section 113 of the Rehabilitation Act requires VR and LEAs to collaborate for all students with disabilities in need of services who are eligible or potentially eligible under the statute to receive Pre-ETS consisting of, among other things, “self-advocacy ...includ[ing] peer mentoring” (29 U.S.C. § 733 *et. seq.*).

Accordingly, WIOA calls for a significant expansion of the presence and availability of self-advocacy, self-determination, and peer mentoring opportunities in geographic proximity to youth and adults with disabilities. Given WIOA’s prohibition on the provision of such services by 14(c) entities themselves for individuals currently working in subminimum wage employment, there exists a distinct and important opportunity for disability-owned businesses and self-employed individuals with disabilities along with other non-profit organizations, including developmental disability councils, associations for the blind, centers for independent living, and protection and advocacy organizations, to fill the burgeoning demand for such services.

### Prohibition on SEAs and LEAs Contracting for Payment of Subminimum Wages

Section 511(b)(2) of WIOA imposes a new prohibition on “contracts and other arrangements” made by schools for the purpose of operating a program for youth that pays subminimum wages under Section 14(c) of FLSA. Specifically, the provision forbids “contracts and other arrangements” by SEAs and/or LEAs made with 14(c) certificate holders “for the purpose of operating a program for an individual who is age 24 or younger under which work is compensated at a subminimum wage” (29 U.S.C. § 794g(b)(2); 34 C.F.R.

When Congress drafted Section 511(b)(2), it sought to prevent the kind of activities that create the school-to-sheltered workshop pipeline. As discussed previously in *U.S. v. Rhode Island and the City of Providence*, the DOJ found a contractual relationship existed that created such a pipeline between a Rhode Island school program (that operated a subminimum wage sheltered workshop inside a school classroom as part of its special education curriculum) and a nearby adult sheltered workshop that led students directly from school to sheltered workshops. Part of the school program’s work was dictated by a contract with the adult sheltered workshop to fulfill that workshop’s production demands. Students were often referred to that same adult sheltered workshop after exiting school. See Section II (B) – ADA, Olmstead, and School Transition earlier in this guide.

Certainly Section 511(b)(2) is an important step toward dismantling a school-to-sheltered workshop pipeline of the kind on display in Rhode Island. Many schools

across the country, however, also have historically entered into contracts with 14(c) providers to provide students in special education programs with work experiences during the school day. For example, many students with I/DD, as part of school transition programs, are paid subminimum wages to sort, seal, staple, and stack products, hang clothes, fold towels, perform recycling and waste management, and rake leaves for 14(c) providers that have contracted with their schools (Hill, Kline, & Richards, 2018). Section 511(b)(2) expressly prohibits such contracts, and, under WIOA, schools are legally responsible for violations of this provision.

However, Section 511(b)(2) does not strictly prohibit *all* of the activities that pay students with disabilities subminimum wages during the school day, even though such activities arguably may also place students at serious risk of unnecessary segregation in violation of the ADA and *Olmstead*. For instance, schools continue to employ students with disabilities directly at subminimum wages. As mentioned earlier in the guide, the DOL continues to license approximately 31 School Work Experience Programs (SWEP) nationwide, paying between approximately 3,000 and 7,000 student workers with disabilities subminimum wages for their labor under Section 14(c) of the FLSA (Wage and Hour Division, 2019). As a result, such students continue to earn sometimes just a few cents per hour fulfilling private contracts during the school day for outside companies.

ED has interpreted Section 511(b)(2) as continuing to allow contracts between schools and 14(c) certificate holders if such contracts are *for some other purpose* than subminimum wage employment. In ED's Preamble Discussion to the Final Rules ("Preamble Discussion") implementing the statute it stated:

We agree with the substantial number of commenters that this section does not preclude State and local educational agencies from contracting with entities holding section 14(c) certificates, such as community rehabilitation programs, for purposes other than operating a program for youth under which work is compensated at a subminimum wage. In other words, nothing in section 511(b)(2) of the Act or final §397.31 precludes a State or local educational agency from contracting with an entity, even if that entity holds a special wage certificate under section 14(c) of the FLSA, for another purpose, including the provision of transition and pre-employment transition services that are beneficial to students with disabilities, so long as they are not paid subminimum wage if compensation is provided. (State Vocational Rehabilitation Services Program, 2016, pp. 55630-55740; 55721)

While this statement plainly acknowledges that some contracts between schools and 14(c) entities may be permissible under WIOA, including for the provision of transition and Pre-ETS, it reflects that ED considers it impermissible for contracts between SEAs and/or LEAs and 14(c) certificate-holders to result in the payment of subminimum wages to students with disabilities.

However, schools, VR, developmental disability and blind service agencies, parents, and families must be careful when deciding to operate a SWEP or to contract for transition services with a 14(c) entity. The same ED Preamble Discussion states that, “Pre-employment transition services under final 34 CFR 361.48(a) and assessment services provided to vocational rehabilitation consumers must be provided *in integrated settings to the maximum extent possible*” (State Vocational Rehabilitation Services Program, 2016, p. 55722). Likewise, the WIOA statute states in unambiguous terms that “work-based learning experiences” provided as part of pre-employment transition services must be “provided in an integrated environment to the maximum extent possible” (29 U.S.C. § 733(b)(2)).

Although the U.S. Departments of Labor and Education recognize that WIOA does not necessarily prohibit schools from contracting with 14(c) certificate-holders for purposes other than the payment of subminimum wages, or prohibit schools from obtaining SWEP licenses, if such practices establish the placement of students in segregated settings to receive transition services or Pre-ETS without giving such students the opportunity to make meaningful or informed choices to experience work in integrated settings, WIOA will likely be violated. More importantly, those actions may expose schools to liability under Title II of the ADA and *Olmstead* as discussed in Section II (B) – ADA, *Olmstead*, and School Transition earlier in this guide.

In fact, to harmonize WIOA with the requirements of the ADA and *Olmstead*, Congress designed WIOA to reflect that CIE settings are a first and priority setting for students with disabilities and that students should be given the opportunity to make informed choices. This is evidenced not only by Section 511’s Rules of Construction and accompanying regulations, but also by ED’s statements in the Rule’s Preamble Discussion that “DSUs should exhaust all opportunities for work-based learning experiences in CIE settings before considering provision of these services in non-integrated work settings” (State Vocational Rehabilitation Services Program, 2016, p. 55693).

The legislative history of WIOA is replete with examples of Congress' intention that Section 511 serve to introduce students with disabilities to integrated, not segregated, work settings as a priority while they are still in school. For example, Senator Tom Harkin, then Chairman of the Senate Health, Education, Labor, and Pensions Committee, stated when taking up the WIOA bill:

It will help a new generation of young people with disabilities to prepare for, obtain, and succeed in competitive integrated employment, not substandard subminimum wage dead-end jobs but in jobs in which people with disabilities can learn and grow to their maximum potential. That is what this bill would do, ensure that young people with disabilities, let's say, who are in high school and they have an IEP... are prepared for transition into the workplace (Senator Harkin, 2014).

Moreover, in addition to the legislative purpose, there are other significant reasons under WIOA, as well as the ADA and *Olmstead*, for SEAs and LEAs to avoid acting as 14(c) certificate-holders or contracting with them. First, if schools are compliant with the requirements of Section 511(a), including identifying students with disabilities early to ensure they receive Pre-ETS, including WBL experiences in integrated environments, it is unlikely that such schools will have any reason to place students with disabilities in SWEPs or sheltered workshops during the school day. Compliance with Section 511(a) should dramatically reduce the number of such school-based subminimum wage programs, as students who have been given a realistic and meaningful opportunity to try work in integrated settings will not need or may not want to participate in such programs.

Schools should be reminded that the ADA and *Olmstead* proscribe placing students with disabilities at serious risk of unnecessary segregation, including in post-secondary segregated employment settings like sheltered workshops, regardless of whether those same places are permitted under WIOA or the FLSA. Accordingly, SWEPs and contracts with sheltered workshops for transition services may be evidence that students with disabilities are being placed at such serious risk of unnecessary segregation in violation of the ADA and *Olmstead*. See Section II (B) - ADA, *Olmstead*, and School Transition earlier in this guide.

## Section 511 Documentation Requirements

Section 511 requires state VR and educational agencies to work collaboratively to limit the use of subminimum wage employment. As mentioned throughout this Guide, the intent of Section 511 is *not* to create new compliance requirements for youth with disabilities to obtain subminimum wage jobs. Rather, its core purpose is to improve pathways into CIE and divert youth from subminimum wage jobs.

Under Section 511(d) of WIOA, VR programs must document the completion of required transition services, Pre-ETS and Career Counseling and Information and Referral (CCIR) services before youth can enter subminimum wage work and periodically for individuals currently earning subminimum wage.

WIOA Section 511(d)(1) requires the DSU (typically the VR agency), in consultation with the SEA, to develop a new process or use an existing process to document the required completion of transition services. The WIOA regulations make clear that the documentation requirements are intended “to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment” (34 C.F.R. § 397.1, 2019). The required services must be provided and documented prior to a youth with a disability starting subminimum wage employment and periodically during subminimum wage employment.

### 1. Documentation Process

The DSU must document the youth’s completion of each Pre-ETS, transition service, and CCIR service, whether provided by the VR agency or an education agency, and must provide the documentation to the youth (34 C.F.R. § 397.10(a), 2019). The documentation, which must be signed by a state agency, must include: the youth’s name; information regarding the determination (when it was done, by whom, and the reasons for the determination); and how the documentation was provided to the youth (34 C.F.R. § 397.10(a)(1), 2019). Documentation of Pre-ETS must be completed as soon as possible after completion, but generally no later than 45 days after completion of the required service, or 90 days in extenuating circumstances.

For students with disabilities being served under IDEA, the appropriate school official must provide documentation of completion of the required transition

services to the designated state unit (34 C.F.R. § 397.10(b)(2), 2019). This documentation must be provided by the LEA to the DSU as soon as possible upon completion of the required activity or service, but no more than 30 days after completion, or 60 days in extenuating circumstances. Extenuating circumstances should be interpreted narrowly to include circumstances such as the unexpected lengthy absence of the educational or DSU personnel necessary for the production of the documentation or the transmittal of that documentation due to illness, family emergency, or a natural disaster (34 C.F.R. § 397.10(3)(c)(2)(i)(B), 2019).

CCIR must be provided to all youth with disabilities under age 24 without regard to the outcome of the determination of their eligibility. CCIR must be provided to a youth known to be seeking subminimum wage employment within 30 days of a determination of ineligibility or plan closure as well as every 6 months in the first year after entry into subminimum wage employment, and annually thereafter (34 C.F.R. §§ 397.10(c)(2)(i)(A), 361.47(a)(10), 2019).

Documentation of the provision of CCIR and documentation of a determination of ineligibility or case closure must be provided to the youth as soon as possible or within 45 days of receipt of the services (or 90 days if additional time is necessary due to extenuating circumstances).

There are also documentation requirements when a youth has refused to participate in a required action. If a youth refuses to receive transition services, the educational agency must provide documentation of the refusal to the DSU within 5 days of the refusal (34 C.F.R. § 397.30(c)(1)(ii), 2019). Documentation of the refusal of transition, pre-employment transition services and CCIR must also be provided by the DSU to the youth within 10 calendar days of the youth's refusal to participate (34 C.F.R § 397.10(c)(2)(ii)).

Table 1 provides an overview of the documentation requirements and the responsibilities of each party involved.

**Table 1. Required Documentation for Individuals Seeking or Engaging in Subminimum Wage Employment**

<b>What documentation is required?</b>	<b>For whom must it be provided?</b>	<b>Routing</b>	<b>When must it be provided?</b>
Youth completed pre-ETS	Youth ages 24 and younger	<ul style="list-style-type: none"> <li>• VR provides to Youth</li> <li>• Youth provides to subminimum wage employer</li> </ul>	VR provides as soon as possible or within 45 days of completing services*
Youth received school transition services	Youth ages 24 and younger	<ul style="list-style-type: none"> <li>• LEA provides to VR</li> <li>• VR provides to youth</li> <li>• Youth provides to subminimum wage employer</li> </ul>	<ul style="list-style-type: none"> <li>• LEA provides as soon as the service is complete but no later than 30 days after completion**</li> <li>• VR provides as soon as possible but no later than 45 days after completion*</li> <li>• Before beginning subminimum wage employment</li> </ul>
Youth refused to participate in transition services	In-school youth ages 24 and younger	<ul style="list-style-type: none"> <li>• LEA provides to VR</li> <li>• VR provides to Youth</li> </ul>	<ul style="list-style-type: none"> <li>• LEA provides within 5 calendar days of refusal</li> <li>• VR provides within 10 days of refusal</li> </ul>

<b>What documentation is required?</b>	<b>For whom must it be provided?</b>	<b>Routing</b>	<b>When must it be provided?</b>
Youth refused to participate in pre-ETS or CCIR	Youth ages 24 and younger	<ul style="list-style-type: none"> <li>• VR provides to youth</li> </ul>	Within 10 days of refusal
Youth was found ineligible for VR services	Youth ages 24 and younger	<ul style="list-style-type: none"> <li>• VR to youth</li> <li>• Youth to subminimum wage employer</li> </ul>	VR provides as soon as possible or within 45 days*
Youth's VR case was closed unsuccessfully	Youth ages 24 and younger	<ul style="list-style-type: none"> <li>• VR provides to Youth</li> <li>• Youth provides to subminimum wage employer</li> </ul>	<ul style="list-style-type: none"> <li>• VR provides as soon as possible or within 45 days*</li> <li>• Before beginning subminimum wage employment</li> </ul>
Provision of CCIR within 30 days of ineligibility for VR services or VR case closure and every 6 months in the first year of subminimum wage employment, and annually thereafter	<ul style="list-style-type: none"> <li>• Youth ages 24 and younger</li> <li>• Anyone in subminimum wage employment</li> </ul>	<ul style="list-style-type: none"> <li>• VR provides to individual</li> <li>• Individual provides to subminimum wage employer</li> <li>• Subminimum wage employer (maintains paperwork)</li> </ul>	<ul style="list-style-type: none"> <li>• VR provides as soon as possible or within 45 days of providing such services*</li> <li>• Before beginning subminimum wage employment</li> </ul>

What documentation is required?	For whom must it be provided?	Routing	When must it be provided?
Provision of information on self-advocacy, self-determination, and peer mentoring training opportunities	Anyone in subminimum wage employment	<ul style="list-style-type: none"> <li>• VR provides to individual</li> <li>• Individual provides to subminimum wage employer</li> <li>• Subminimum wage employer maintains paperwork</li> </ul>	<ul style="list-style-type: none"> <li>• VR provides as soon as possible or within 45 days of providing the information*</li> </ul>

\*or within 90 days if additional time is necessary due to extenuating circumstances

\*\*or within 60 calendar days if additional time is needed due to extenuating circumstances

As noted previously, in addition to Section 511’s requirement that a youth receive IDEA transition services or Pre-ETS, the youth must have applied for VR services and (1) been found ineligible or (2) been found eligible, **have worked toward an IPE employment outcome for a reasonable period of time without success**, and have had his or her VR case closed (29 U.S.C. § 794g(a)(2)(B)). For VR eligible individuals, the documentation must include an IPE, including a description of the specific employment outcome chosen by the individual, the specific services needed to achieve that outcome, as well as timelines, descriptions of the entity(ies) to provide the services and the methods to be used, and responsibilities of the relevant agencies and the individual (34 C.F.R. § 361.46, 2019). For individuals with the most significant disabilities for whom a supported employment setting is appropriate, the documentation must:

- specify the supported employment services to be provided;
- specify the expected extended services needed, which may include natural supports;
- identify the source of extended services;
- provide for periodic monitoring to ensure that the individual is making satisfactory progress;

- provide for the coordination of services;
- identify that the training will be provided on site to the extent that job skills training is provided; and
- include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities (34 C.F.R. §§ 361.46(a), 361.46(b), 2019).

The IPE must also document any post-employment services necessary (34 C.F.R. § 361.46(c), 2019). Moreover, an IPE for a student with a disability must be coordinated with the student’s IEP or Section 504 plan, as appropriate (34 C.F.R. § 361.46(d), 2019).

A subminimum wage employer must review the required documentation and maintain copies before hiring an individual with a disability (Weil, 2016). The DSU, as well as the DOL, are also authorized to review the documentation (34 C.F.R. § 397.50, 2019).

## 2. VR Agency Responsibility Versus LEA Responsibility

Subsequent sections of this chapter provide the regulatory detail for LEAs, VR programs, and subminimum wage employers to understand their respective roles and responsibilities in the documentation process under Section 511 of WIOA.

## **Best Practices and Guidelines for Data Sharing to Facilitate Implementation of Section 511**

The strategies, sample information, and documents provided in the following sections represent best practices that states can adopt at various levels to put forth proactive and diligent efforts to identify and successfully support integrated employment outcomes for youth who may be at risk of being employed at subminimum wage.

### *Cross-Systems Data Sharing*

Cross-systems data sharing agreements between state VR, educational agencies, and 14(c) employers are necessary to deliver and document the required activities and service elements outlined under WIOA. When developing data sharing agreements, state VR and education agencies should involve legal counsel to ensure the agreement complies with all necessary laws and regulations. Data sharing agreement should include

- parties to the data sharing agreement;
- purpose of the data sharing agreement;
- personal information to be disclosed through the data sharing agreement;
- how the confidentiality of the personal information to be disclosed will be protected;
- when personal information obtained from another agency (i.e., confidential UC information) must be destroyed in order to comply with requirements governing that data;
- duration of the data sharing agreement;
- procedural requirements for the request for and provision of data;
- cost for the data matching and how the payment will be made; and
- how the parties will ensure compliance, including permitting federal administering agencies to monitor for compliance, as appropriate (WINTAC, 2017b, p. 5).

The regulations for VR programs mandate that the VR service portion of the Unified or Combined State Plan must describe efforts to cooperate with employers as well as other federal, state, and local agencies and programs, such as Medicaid, state use contracting programs, Independent Living Centers, services to American Indians and individuals who are blind, long-term care programs, Assistive Technology programs, and the Ticket to Work and Self-Sufficiency Program (34 C.F.R. § 361.24, 2019).

The DOL and ED have issued joint guidance on data matching to facilitate WIOA performance reporting and evaluation. According to the guide,

Under WIOA, States are required to use education information and quarterly wage records to measure performance of the six core programs and other title I programs authorized by WIOA, which raises complex issues related to data sharing and privacy. This guidance provides States with information about applicable requirements for, and procedures and options for, matching confidential Unemployment

Compensation (UC) information from wage records with personal information from VR records, and personally identifiable information (PII) from education records, and for protecting the confidentiality of information contained in such records. (U.S. Department of Education and U.S. Department of Labor, 2016)

WINTAC has also developed a [Data Sharing Toolkit](#) and related training with input from RSA.

### *Using Memoranda of Understanding*

State agencies can develop a Memoranda of Understanding (MOU) to strengthen collaboration by clearly outlining roles and responsibilities for identifying, connecting, and serving youth with disabilities, including those who may be at risk of entering subminimum wage employment. MOUs flow from state-level interagency agreements to provide programmatic guidance at the local level. At minimum, MOUs should contain

- a statement of purpose and target population for which the MOU is designed,
- lead agency and MOU oversight,
- the specific partners involved,
- guiding principles and main objectives,
- the roles and responsibilities of each respective agency, including financial responsibilities, and
- a process for how conflicts will be resolved.

In order to effectively implement Section 511, information about how the following activities will be conducted and coordinated must also be addressed:

- Pre-employment transition services;
- Consultation and technical assistance;
- Transition planning and coordination of services;
- Outreach to and identification of students and potentially eligible youth with disabilities; and
- Documentation and assurance requirements under Section 511.

The state of Iowa has developed an MOU for Section 511 implementation between Iowa VR Services, and the Iowa Department of Education,. A copy of this document is

available at <https://educateiowa.gov/sites/files/ed/documents/MOA%202019-2021.pdf>. Collaboration to implement Section 511 is also occurring with community rehabilitation providers, case managers, and the Iowa Client Assistance Program ([WIOA Section 511 Cheat Sheet, 2016](#)).

In addition to developing cross-system MOUs to facilitate implementation of Section 511, state agencies should develop comprehensive plans to provide joint trainings and disseminate practical information to program staff so they can fully understand and implement the intent of Section 511 to divert youth from subminimum wage employment into jobs in CIE.

### *Data Sharing to Identify Youth with Disabilities 24 or Younger*

VR programs, in collaboration with schools, are responsible for identifying youth 24 years of age and younger who are in need of transition services and preemployment transition services, including students with disabilities, those who are potentially eligible for VR services, and youth with disabilities (34 CFR §361.5(c)(55); 34 CFR §361.22(b)(4)). Once identified, they must document that the youth received (or receives) Pre-ETS (for students with disabilities) or transition services (for youth with disabilities), and that Section 511's other requirements discussed previously have been satisfied. Below are examples of ways that states can identify in-school and out of school youth (OSY).

### Best Practice Strategies for Identifying In-School Youth

The Wisconsin Division of Vocational Rehabilitation (WDVR) has identified approximately 35,000 potentially eligible students through data sharing with the Wisconsin Department of Public Instruction and 9,000 subminimum wage individuals (Wisconsin Division of Vocational Rehabilitation, 2016, p. 1-5) through data sharing with the Wisconsin Department of Workforce Development Equal Rights Division. In order to connect these youth to Pre-ETS, they employ three primary strategies:

- The Statewide Transition Action & Resource Team (START),
- VR counselor presence in schools, and
- Flagging subminimum wage post-school employment goals.

#### **1. Statewide Coordinator and START**

The WDVR has a designated staff to lead statewide transition coordination efforts along with a team of counselors and VR personnel that comprise the

START team. START has a representative from each of the state's 11 Workforce Development Areas. These representatives lead the delivery of transition services in their area, including coordinating activities, training other VR staff, and participating in local transition councils and statewide transition initiatives (Wisconsin Division of Vocational Rehabilitation, 2016, p. 3).

## **2. VR Counselor Presence in Schools**

The WDVR assigns a counselor to each district or high school building in the state and makes this list accessible on the VR website. These counselors "provide outreach, technical assistance, information and referral to the secondary education officials in their assigned schools and districts [and] assure the provision of direct services to eligible youth" (Wisconsin Division of Vocational Rehabilitation, 2016, p. 3).

## **3. Flagging Subminimum Wage Post-School Employment Goals**

The Wisconsin Department of Public Instruction uses a web-based IEP, known as Post-secondary Transition Plan (PTP), for LEAs to document student post-secondary transition goals. The system flags the PTP for any student who indicates a goal of sheltered/subminimum wage employment. This prompts the Department of Public Instruction's Transition Improvement Grant Coordinators to follow up with school personnel to provide guidance to the IEP team on appropriate transition services and connection to VR (Wisconsin Department of Public Instruction, 2016).

### **Best Practice Strategies for Identifying Out-of-School Youth**

Out-of-school youth (OSY) ages 24 and younger, as discussed more fully below in Section V, may be more difficult to identify than in-school youth. VR Programs can identify OSY through two primary means:

- outreach and referral coordination with programs who may be serving unemployed youth with disabilities and
- by requesting information from employers who may be currently employing youth 24 years or younger under a 14(c)-subminimum wage certificate.

## **1. Collaboration with Programs Serving Unemployed, OSY with Disabilities**

Programs that may be involved with unemployed, OSY with disabilities can include long-term care/home and community-based services, foster care, juvenile and criminal justice systems, and welfare programs. VR programs can conduct outreach to these programs related to WIOA and enlist their help to understand how many youth may be potentially eligible for services, including those who may be at risk of subminimum wage employment. State VR agencies can develop referral procedures and forms, similar to those used by schools, to connect youth to VR for further assistance.

## 2. Collaboration with Employers that Hold 14(c) Certificates

DOL’s Wage and Hour Division maintains a list of all 14(c) employers, which can be found at [www.dol.gov/whd/specialemployment/CRPlist.htm](http://www.dol.gov/whd/specialemployment/CRPlist.htm). VR agencies can request that these employers provide a list of all individuals, including their birthdates, who are currently employed for subminimum wages. The South Dakota Department of Rehabilitation Services requires subminimum wage employers to submit an excel spreadsheet containing information about each individual employed under their 14(c) certificate, including the individual’s date of birth (South Dakota Department of Human Services, n.d.; South Dakota Department of Human Services, 2016).

**Table 2. State Examples of Information and Documents for Data Sharing**

State	Data Sharing Information and Documents
Arizona	<ul style="list-style-type: none"> <li>• AZ Department of Economic Security Data Sharing Request/Agreement: <a href="https://des.az.gov/sites/default/files/legacy/dl/J-119-Single.pdf">https://des.az.gov/sites/default/files/legacy/dl/J-119-Single.pdf</a></li> <li>• Detailed, joint guidance to AZ state Agencies for process implementation and documentation requirements under section 511: <a href="https://des.az.gov/file/10889/download">https://des.az.gov/file/10889/download</a></li> <li>• Pre-ETS Policy: <a href="https://des.az.gov/sites/default/files/media/Pre-Employment-Transition-Services-policy.pdf">https://des.az.gov/sites/default/files/media/Pre-Employment-Transition-Services-policy.pdf</a></li> <li>• Youth Seeking Subminimum Wage Policy: <a href="https://des.az.gov/sites/default/files/media/Youth-Seeking-Subminimum-Wage-Employment-policy.pdf">https://des.az.gov/sites/default/files/media/Youth-Seeking-Subminimum-Wage-Employment-policy.pdf</a></li> </ul>
Ohio	<ul style="list-style-type: none"> <li>• Ohio Transition Support Partnership (OTSP): <a href="http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Secondary-Transition-and-Workforce-Development/Ohio-Transition-Support-Partnership">http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Secondary-Transition-and-Workforce-Development/Ohio-Transition-Support-Partnership</a> and</li> </ul>

State	Data Sharing Information and Documents
	<p><a href="http://apse.org/wp-content/uploads/2016/07/Improving-Employment-Outcomes-for-Students-with-Disabilities-Helling.pdf">http://apse.org/wp-content/uploads/2016/07/Improving-Employment-Outcomes-for-Students-with-Disabilities-Helling.pdf</a></p> <ul style="list-style-type: none"> <li>• OH Employment First Joint Task Force Guidance on Section 511: <a href="http://www.ood.ohio.gov/Portals/0/EF%20Taskforce%20Joint%20Guidance%20Section%20511.pdf">http://www.ood.ohio.gov/Portals/0/EF%20Taskforce%20Joint%20Guidance%20Section%20511.pdf</a></li> <li>• OH Department of Education Section 511 Guidance: <a href="https://education.ohio.gov/getattachment/Topics/Special-Education/Federal-and-State-Requirements/Secondary-Transition-Planning-for-Students-with-Di/WIOA-Section-511-Guidance-for-School-Districts-2-16-17-pg.pdf.aspx">https://education.ohio.gov/getattachment/Topics/Special-Education/Federal-and-State-Requirements/Secondary-Transition-Planning-for-Students-with-Di/WIOA-Section-511-Guidance-for-School-Districts-2-16-17-pg.pdf.aspx</a></li> </ul>
Wisconsin	<ul style="list-style-type: none"> <li>• WI DVR Pre-ETS Policy Guide: <a href="http://dwd.wisconsin.gov/dwd/publications/dvr/pdf/dvr_18333_p.pdf">http://dwd.wisconsin.gov/dwd/publications/dvr/pdf/dvr_18333_p.pdf</a></li> <li>• WI DVR Potentially Eligible Referral Form: <a href="http://dwd.wisconsin.gov/dwd/forms/dvr/pdf/dvr_18207.pdf">http://dwd.wisconsin.gov/dwd/forms/dvr/pdf/dvr_18207.pdf</a></li> </ul>
Nebraska	<ul style="list-style-type: none"> <li>• Pre-ETS Consent &amp; Information Release: <a href="https://vris.nebraska.gov/wiki/pages/B2o7G6Y/PreEmployment_Transition_Services_FAQ.html">https://vris.nebraska.gov/wiki/pages/B2o7G6Y/PreEmployment_Transition_Services_FAQ.html</a></li> </ul>

*Performance Indicators Specific to Data Sharing*

State agencies can develop specific statewide and regional/local performance indicators to measure their effectiveness at meeting the regulatory requirements of Section 511. Table 3 provides an overview of the performance indicators and measurable data state VR and education agencies should consider. In addition to these indicators specific to data sharing, states should develop strategies to improve communication and collaboration at the local level to ensure all youth with disabilities, including those with the most significant disabilities, are provided with high quality, person-centered and individualized services to achieve CIE outcomes.

**Table 3. Performance Indicators to Measure Effectiveness of Data Sharing**

<b>Performance Indicator</b>	<b>Potential State VR Agency Measurable Data</b>	<b>Potential SEA Measurable Data</b>
Identification of Youth with Disabilities for Pre-ETS	<ul style="list-style-type: none"> <li>• Number of potentially eligible youth referred to VR</li> <li>• Referral source</li> <li>• Potentially eligible youth who applied and were found eligible for VR services</li> <li>• Potentially eligible youth who applied and were not found eligible for VR services</li> <li>• Percentage of youth who received documentation of eligibility determination with specified timeframes</li> </ul>	<ul style="list-style-type: none"> <li>• Number of youth served under IDEA services</li> <li>• Number of youth referred by LEA to VR</li> </ul>
Completion of Required Activities and Services under Section 511	<ul style="list-style-type: none"> <li>• Categories and amounts of Pre-ETS provided to potentially eligible youth</li> <li>• Categories and amounts of Pre-ETS provided to eligible youth</li> <li>• Categories and amounts of Pre-ETS refused by potentially eligible youth</li> <li>• Categories and amounts of Pre-ETS refused by eligible youth</li> <li>• Percent of youth who received documentation of service completion or refusal within specified timeframes</li> <li>• VR case closure data for youth</li> </ul>	<ul style="list-style-type: none"> <li>• Categories and amounts of transition services documented in transition services reports sent to VR</li> <li>• Percent of transition service completion or refusal documentation transmitted to VR within specified timeframes</li> <li>• Post-School Employment Outcomes</li> </ul>
Completion of CCIR services	<ul style="list-style-type: none"> <li>• Number of individuals requiring 6-month review</li> <li>• Number of individuals who completed 6-month review</li> <li>• Number of individuals requiring annual review</li> <li>• Number of individuals who completed annual review</li> </ul>	

Performance Indicator	Potential State VR Agency Measurable Data	Potential SEA Measurable Data
	<ul style="list-style-type: none"> <li>• Number of individuals earning subminimum wages who were referred to VR program</li> <li>• Number of youth earning subminimum wage who closed successfully with VR</li> <li>• Percent of youth who received documentation of receiving information about self-advocacy, self-determination and peer mentoring training within 45 days</li> </ul>	

**Best Practices and Guidelines for Coordination of Resources and Services Under Section 511**

Under WIOA and IDEA, state VR and education agencies share responsibilities to provide youth with disabilities opportunities to explore careers, develop employment skills, connect to services, and achieve employment outcomes. Research indicates that interagency collaboration is a key component to achieving positive post-school outcomes (Flowers et al., 2018). When a student with a disability reaches the age of eligibility for VR services, and in some cases Medicaid Home and Community-Based services as well, a significant amount of overlap can occur between vocational-related services and supports from schools, VR agencies, and long-term care programs. Without proper guidance and coordination of transition services, confusion, lack of information, or disagreements can occur at the local level, which can significantly impact a youth’s ability to receive the supports and services needed to achieve post-school employment goals.

According to WIOA, “each State must ensure that the designated State unit, in collaboration with the local educational agencies, provide, or arrange for the provision of, Pre-ETS for all students with disabilities ... in need of such services, without regard to the type of disability” (34 C.F.R. § 361.48(a), 2019). Furthermore, “pre-employment transition services must be made available Statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services” (34 C.F.R. § 361.48(a)(1), 2019).

The IDEA requires schools to facilitate a student’s “movement from school to post school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation” through a coordinated set of activities (20 U.S.C. § 1401(34)(a)). WIOA places enhanced responsibility on schools to provide students with disabilities meaningful opportunities and connections to services for employment. Facilitating a connection to the local VR office is a fundamental transition service that schools can provide to youth with disabilities.

In order to divert youth from subminimum wage jobs and create pathways to CIE, including customized employment, state VR and education agencies should consider how guidelines can be used to enable local stakeholders to implement proactive, creative, and individualized strategies to engage youth with disabilities (and their families) in employment planning. When doing so, state agencies must recognize that many educational and VR program staff may lack knowledge about, and experience working with, each other’s programs. State agencies must work closely to provide agency staff, service providers, youth, and families with useful information and the tools necessary to foster relationships and collectively build functional knowledge for effectively supporting youth, including those with complex barriers, who may be at risk of subminimum wage employment.

One example of best practice in service coordination can be found in Wisconsin, where the Department of Public Instruction reorganized its Transition Services guidance document to match the Pre-ETS categories under WIOA (Wisconsin Department of Public Instruction, n.d.).

Written interagency agreements between state VR and education agencies, in concert with technical assistance guides or MOUs that clearly define roles, responsibilities, and processes to support students to achieve post-school employment goals, should drive effective services at the local level. At a minimum, interagency agreements should include guidance regarding

- consultation, technical assistance and training for state agency staff;
- transition planning;
- state agency roles and responsibilities, including fiscal responsibilities;
- procedures for outreach and identification of students with disabilities;
- policies and procedures for coordination of services;

- assurances regarding limitations on the use of subminimum wages; and
- procedures for dispute resolution.

WINTAC has developed two useful technical assistance pieces for states:

- 1) A table of the regulations in IDEA and the Rehabilitation Act, as amended by WIOA, as they pertain to the development of interagency agreements, which can be accessed at: [www.wintac.org/topic-areas/pre-employment-transition-services/resources/rehab-act-and-idea-regs-interagency-agreement](http://www.wintac.org/topic-areas/pre-employment-transition-services/resources/rehab-act-and-idea-regs-interagency-agreement)
- 2) A webpage of example language for states to consider when crafting their own interagency agreements, which can be found at: [www.wintac.org/topic-areas/pre-employment-transition-services/resources/interagency-agreement-language-examples](http://www.wintac.org/topic-areas/pre-employment-transition-services/resources/interagency-agreement-language-examples)

The LEAD Center has developed a Policy Summary Regarding Cooperative Agreements Between Vocational Rehabilitation Agencies and Medicaid, Mental Health (MH) and Development/Intellectual Disabilities (DD/ID) Agencies (October 2016), which can be found here: [www.leadcenter.org/system/files/resource/downloadable\\_version/MOU%20Summary.pdf](http://www.leadcenter.org/system/files/resource/downloadable_version/MOU%20Summary.pdf)

### *Sequencing Versus Braiding Versus Blending of Funds*

Sequencing funding involves establishing a particular order in which each respective state agency will provide and fund services. Blending funding involves combining state agency funds to jointly provide a particular service or set of services. Braided funding involves weaving together a set of services, which are distinctly funded and provided by each respective state agency.

Blended funding can be politically challenging for agencies and requires a greater level of coordination and documentation. Braiding and sequencing of funding are a much more straightforward approach, allowing each program to use its own policies and practices for the services it provides.

State agencies that engage in best practices for a coordinated approach to funding services clearly outline resource sharing at the individual level. As explained in the previous section, they provide more than just written guidance on funding

procedures by ensuring specific activities are carried out to build local knowledge of and access to transition planning and resources. Additionally, they capture and share real-life examples of creative and coordinated service funding.

### *Inter-Agency Agreements Involving Exchange of Funding*

Federal regulations under IDEA and WIOA regarding interagency fiscal responsibilities require

- an identification of, or a method for defining, the financial responsibility to ensure FAPE to children with disabilities (34 C.F.R. § 300.153(a)(1), 2019);
- the conditions, terms, and procedures under which an LEA must be reimbursed by other agencies (34 C.F.R. § 300.154(a)(2), 2019);
- development, review, and revision of the IEP (34 C.F.R. §§ 300.324(a), (c)(2), 2019); and
- rules of construction.

The regulations provide that nothing in this part will be construed to reduce the obligation under the IDEA of an LEA or any other agency to provide or pay for any transition services that are also considered special education or related services and that are necessary for ensuring a free appropriate public education to children with disabilities within the state (20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 361.22(c), 2019).

WINTAC, in collaboration with the National Technical Assistance Center on Transition (NTACT), has developed a toolkit for states in developing formal interagency agreements for coordination of Pre-ETS and transition services under the Rehabilitation Act of 1973, as amended by WIOA and the IDEA, which can be found at [www.wintac.org/topic-areas/pre-employment-transition-services/resources/toolkit-guide](http://www.wintac.org/topic-areas/pre-employment-transition-services/resources/toolkit-guide).

### *Performance Indicators Specific to Coordination of Resources and Services*

State VR and education agencies should consider how their current program practices and measurement tools fit into the four areas for which state agencies must coordinate resources and services related to implementation of Section 511:

- identifying all eligible or potentially eligible youth with disabilities,
- providing and documenting the completion of Pre-ETS,

- providing and documenting the completion of transition services under IDEA, and
- providing and documenting the completion of required CCIR for individuals currently earning subminimum wage.

Table 4 provides some areas for state agencies to consider when developing goals related to measuring their Section 511 implementation.

**Table 4. Examples of Possible Section 511 Implementation Measurements**

<b>Areas of Required Coordination</b>	<b>Possible Measures</b>
Identifying Youth	<ul style="list-style-type: none"> <li>- Plan for identifying youth in State/Unified Plan</li> <li>- Total number of potentially eligible youth</li> <li>- Number of youth referred to VR services, by LEA or service area</li> <li>- Number of youth who open a VR case</li> <li>- Number and type of WIOA related outreach/education activities completed by state agency in each service region</li> <li>- Number of youth successfully closed with VR</li> </ul>
Providing and documenting the completion of Pre-ETS	<p>Capacity to provide Pre-ETS to youth:</p> <ul style="list-style-type: none"> <li>- Number of Pre-ETS vendors by service area</li> <li>- Number of youth who received Pre-ETS</li> <li>- Average number of Pre-ETS provided to each youth</li> <li>- Types of Pre-ETS provided by program area</li> <li>- Average timelines for service completion</li> <li>- Waiting list metrics</li> </ul> <p>Documentation of Completion of Pre-ETS:</p> <ul style="list-style-type: none"> <li>- Completion/referral metrics</li> <li>- Required documentation timeline metrics</li> </ul>
Providing and documenting the completion of Transition Services under IDEA	<ul style="list-style-type: none"> <li>- Number of students enrolled in VR by District or Service Area</li> <li>- Number and types of IDEA transition services provided to students enrolled in VR by District or Service Area</li> <li>- Required documentation sharing timeline metrics</li> <li>- Post-school employment outcomes (Indicator 14)</li> </ul>

Areas of Required Coordination	Possible Measures
Providing and documenting the completion of required CCIR services for individuals currently earning subminimum wage	<ul style="list-style-type: none"> <li>- Number of individuals working for subminimum wage by 14(c) employers</li> <li>- Number of individuals who receive CCIR from VR agency</li> <li>- Summary of responses from participant career questionnaire/interview during CCIR</li> <li>- Resources by Region and Capacity to provide self-advocacy, self-determination, and peer mentoring training</li> <li>- Number of individuals working for subminimum wage who apply for VR services</li> <li>- Number of individuals working for subminimum wage who are successfully closed from VR services</li> </ul>

Helpful Tools for State Agencies for Developing Performance Indicators Related to Transition and Employment for Youth with Disabilities

- Vocational Rehabilitation Services and Supported Employment Services Programs, Federal FY 2017 Monitoring and Technical Assistance Guide: <https://www2.ed.gov/rschstat/eval/rehab/107-reports/2017/monitoring-and-technical-assistance-guide.pdf>
- A Transition Guide To Post-secondary Education and Employment for Students and Youth with Disabilities, U.S. Department of Education: <https://sites.ed.gov/idea/files/postsecondary-transition-guide-august-2020.pdf>
- The Guideposts for Success 2.0: A Framework for Successful Youth Transition to Adulthood, National Collaborative on Workforce and Disability for Youth, Institute for Educational Leadership: <https://files.eric.ed.gov/fulltext/ED598433.pdf>

The National Technical Assistance Center on Transition (NTACT) has also identified effective practices and predictors for transition services for youth with disabilities. This information is available at <https://www.transitionta.org/effectivepractices>.

**Table 5. State Examples and Documents Related to Best Practices for Coordination of Resources and Services Under WIOA**

Source	Best Practices Resource
National Technical Assistance and Research Center to Promote Leadership Info Brief with Braided Funding Examples	Using Braided Funding Strategies to Advance Employer Hiring Initiatives that Include People with Disabilities: <a href="http://www.dol.gov/odep/pdf/BraidedFSReport.pdf">www.dol.gov/odep/pdf/BraidedFSReport.pdf</a>
Alabama’s Gaining Access to Employment (GATE) Project	An example of a collaboration to provide services to support integrated employment opportunities through sequencing of funds: <a href="http://www.communityinclusion.org/article.php?article_id=395">www.communityinclusion.org/article.php?article_id=395</a>
Wisconsin’s Interagency Transition Action Guide and County Communities on Transition	Detailed guidance for implementation of the interagency agreement for jointly served adults and transitioning youth: <a href="http://dwd.wisconsin.gov/dvr/pdf_files/tag.pdf">http://dwd.wisconsin.gov/dvr/pdf_files/tag.pdf</a>  Wisconsin County Communities on Transition: <a href="https://witig.org/transition-partners/ccots-and-wicot/">https://witig.org/transition-partners/ccots-and-wicot/</a>
The Arc of Tennessee Transition Handbook	Secondary Transition Handbook, Moving from School to Adult Life, 2016: <a href="http://www.thearc.org/Assets/Docs/Secondary-Transition-Handbook.pdf">www.thearc.org/Assets/Docs/Secondary-Transition-Handbook.pdf</a>
Ohio Employment First Transition Planning Webpage	Detailed information and examples for collaboration at the individual, regional, and state level: <a href="http://www.ohioemploymentfirst.org/view.php?nav_id=26">www.ohioemploymentfirst.org/view.php?nav_id=26</a>
Kansas State Department of Education Policy Statement on Employment First	Kansas Employment First Policy Statement: <a href="http://www.ksde.org/Portals/0/SES/Employment%20First%20KSDE%20Policy%20Statement.pdf">www.ksde.org/Portals/0/SES/Employment%20First%20KSDE%20Policy%20Statement.pdf</a>
Nebraska Transition Services Planner	A guide for educators in arranging Nebraska VR services for students with disabilities: <a href="http://vr.nebraska.gov/resources/pdfs/TR_Educators_Guide.pdf">http://vr.nebraska.gov/resources/pdfs/TR_Educators_Guide.pdf</a>

Source	Best Practices Resource
<p>Hawaii VR Guiding Documents for Implementation of Supported Employment Under WIOA</p>	<p>Supported Employment Eligibility and Planning (Part 1):  <a href="http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/hi-part01-AccessiblePart1-SE-EligibilityandPlanning.docx">http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/hi-part01-AccessiblePart1-SE-EligibilityandPlanning.docx</a></p> <p>Supported Employment Intensive Skills Training and Support (Part 2):  <a href="http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/hi-part02-AccessibleICF-IntensiveSkillsTraining-andSupport.docx">http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/hi-part02-AccessibleICF-IntensiveSkillsTraining-andSupport.docx</a></p> <p>Supported Employment (SE) Program Checklist and Case Example:  <a href="http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/HI%27s_SE_ProgramChecklist_and_CaseExample.docx">http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/HI%27s_SE_ProgramChecklist_and_CaseExample.docx</a></p> <p>Supported Employment definitions and practice under Workforce Innovation and Opportunity Act (WIOA):  <a href="http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/SupportedEmployment_definitions_and_practice_under_WIOA.docx">http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta03_IntCompetEmpl/SupportedEmployment_definitions_and_practice_under_WIOA.docx</a></p>
<p>Arizona Community of Practice on Transition</p>	<p>AZ Community of Practice:  <a href="http://www.azed.gov/specialeducation/transition/azcopt/">http://www.azed.gov/specialeducation/transition/azcopt/</a></p>

## GENERAL RESOURCES

- Vocational Rehabilitation Youth Technical Assistance Center (Y-TAC), <https://y-tac.org/>
- WINTAC Guide to Implementing Section 511 Requirements, [www.wintac.org/topic-areas/implementation-of-requirements](http://www.wintac.org/topic-areas/implementation-of-requirements)
- WINTAC Crosswalk of WIOA Performance Indicators - IEL Part B Transition Performance, [http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta\\_PreETS/WIOA-IDEA\\_Indicator\\_Visual\\_Accessible.pdf](http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta_PreETS/WIOA-IDEA_Indicator_Visual_Accessible.pdf)
- RSA Training on Regulations Implementing the Rehabilitation Act of 1973, As Amended by WIOA, Transition of Students and Youth with Disabilities,
- <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/transition-of-students-and-youth-with-disabilities-from-school-to-postsecondary-education-and-employment.pdf>
- NTACTION CIE Toolkit, <https://transitionta.org/cietoolkit>
- NTACTION Best Practices for Pre-Employment Transition Services, <https://transitionta.org/sites/default/files/news/Effective%20Practices%20and%20PreEmployment%20Transition%20Services.pdf>

## Enforcement and Accountability

### *DOL Enforcement*

Under the FLSA, the DOL has the authority to enforce the terms under which individuals are employed at subminimum wages. Specifically, the Secretary of Labor has been conferred the authority to: (1) administer and enforce the minimum wage and overtime requirements of Sections 6 and 7 of the FLSA; (2) issue and revoke subminimum wage certificates (14(c) certificates); (3) and, importantly, to remedy the unauthorized payment of subminimum wages (29 U.S.C. §§ 206, 207, 214(c); 29 C.F.R. § 525, 2019; Weil, 2016). Section 511 states that it “shall be construed in a manner consistent with the provisions of the Fair Labor Standards Act of 1938,” and Section 511’s Rules of Construction also require that it be read consistently with the FLSA (34 C.F.R. § 397.3, 2019). Accordingly, the DOL has enforcement authority over Section 511 of WIOA.

Under WIOA, employers with 14(c) certificates who have failed to meet the requirements of Section 511 are required to pay the minimum wage for each employee who would otherwise be eligible for the payment of a subminimum wage

under the 14(c) program. According to the DOL, “the Secretary of Labor may assess back pay and any other appropriate relief in the same manner as he would against any other employer who failed to pay the minimum wage as required by section 6 of FLSA” (Weil, 2016). The Wage and Hour Division of the DOL is authorized “to seek back pay at the full minimum wage rate for each individual for whom the mandatory services and/or documentation is not provided or does not meet the established criteria” (Weil, 2016).

Importantly, DOL’s enforcement authority is exercised based on the documentation, or lack thereof, on file with 14(c) employers (29 U.S.C. § 794g(e)(2)(B)). The VR agency (or DSU) and the DOL have the right to review documentation to fulfill the intent of Section 511. Thus, the VR agency has the power to conduct reviews of documentation and to report violations to DOL for enforcement. Moreover, Section 11 of FLSA gives the DOL the authority to investigate “wages, hours and other conditions and practices of employment,” including Section 511 documentation, in order to enforce FLSA’s statutory requirements (29 U.S.C. § 211(a)). For instance, if a student with a disability does not or cannot provide documentation that he or she has received Pre-ETS or transition services prior to entering a 14(c) certificate holder’s program, the employer must pay full minimum wages until the youth provides such documentation. Similarly, if an individual cannot present documentation that he or she has received CCIR services, the employer must pay full minimum wages until that individual is able to supply such documentation.

Consistent with its enforcement authority, DOL investigators will request the following from 14(c) employers as a matter of course:

- birthdates and start dates of all employees being paid a subminimum wage under section 14(c) who are hired on or after July 22, 2016;
- documentation that each youth has completed all three requirements of Section 511 prior to being paid a subminimum wage; and
- documentation and other evidence that all employees, regardless of age, have been provided with the required career counseling and information about local self-advocacy, self-determination, and peer mentoring training opportunities once every six months for the first year of employment and annually thereafter (and not provided by a 14(c) certificate-holder).  
([https://www.dol.gov/whd/FieldBulletins/fab2016\\_2.htm](https://www.dol.gov/whd/FieldBulletins/fab2016_2.htm)).

Consequently, 14(c) certificate-holders should formulate and implement protocols to compile, receive, and maintain complete documentation and records on file, to avoid enforcement actions brought under Section 511 and the FLSA.

### *ED Enforcement*

ED's Office for Civil Rights has enforcement authority over Section 511(b)(2) of WIOA, which prohibits "contracts and other arrangements" made by schools for the purpose of operating programs for youth that pay subminimum wages under Section 14(c) of FLSA (29 U.S.C. § 794g(b)(2); 34 C.F.R. § 397.31, 2019).

# **Section III. Successful Strategies for WIOA Pre-Employment Transition Services to Prevent Unnecessary Segregation and Fulfill Employment Goals of the IDEA**

## **Introduction**

The passage of WIOA affords exciting opportunities to promote and facilitate the transition to post-school CIE for all students with disabilities, including those with severe disabilities. WIOA ensures that educators and VR providers collaborate to align and extend the transition planning and services required by the IDEA through the implementation of WIOA Pre-ETS in order to improve post-school CIE outcomes. Under both WIOA and the IDEA, competitive integrated employment is “real work for real pay” and is the gold standard of transition outcomes for students with disabilities (National Technical Assistance Center on Transition, 2017). The work-based experiences provided as part of the Pre-ETS under the WIOA must closely align with the IDEA mandated post-school employment goals of the student. Given that integrated employment is a strongly desired transition outcome regardless of disability or needed supports, integrated employment should be a realistic and desirable expectation for all students.

Similar to IDEA transition planning, as a best practice, Pre-ETS should be individualized and based upon the student’s strengths, preferences, and interests, as well as focused on increasing desirable work-based skills and ensuring their support needs are considered. By connecting the transition planning and services provided by schools with appropriate pre-employment services through VR, effective and high quality work-based experiences are possible that lead to the development of individual career pathways in jobs with a strong student-employer match so that the employment outcome is mutually beneficial for the student and business.

### **CIE INCLUDES THE FOLLOWING CRITERIA:**

- Work typically found in the community
- Employee with a disability interacts with other employees within a particular work unit as well as the entire worksite, as appropriate for the work performed with persons who are not individuals with disabilities

To learn more about the criteria for integrated employment within “competitive integrated employment” from section 7(5)(B) of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA), and its implementing VR program regulations in 34 CFR §361.5(c)(9)(ii) (see 81 FR 55629 (August 19, 2016)), see the FAQ at: <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html>.

## **WIOA Pre-Employment Transition Services (Pre-ETS)**

WIOA regulations emphasize the collaboration between state VR agencies and schools and community agencies. As discussed earlier in Section II (Workforce Innovation and Opportunity Act), states must reserve at least 15 percent of their federal allotment of VR services specifically for Pre-ETS. This does not mean that all students with disabilities will receive VR services, but that VR must ensure that Pre-ETS are available to those who need them by either providing the services directly, counseling and sharing information and resources, and/or collaborating with schools to ensure the services are provided. Thus, WIOA ensures strong collaboration and coordination between VR and schools.

There are five types of Pre-ETS that must be funded by state VR agencies to support VR applicants and clients, as well as students with disabilities who are not VR applicants or clients. This means that a student does not need to be found eligible for VR in order to receive Pre-ETS, but can be participating in services through their school or other agency responsible for providing Pre-ETS, in collaboration with VR.

The Pre-ETS that state VR agencies are required to provide or arrange for the provision of include

- job exploration counseling;
- WBL experiences;
- counseling for enrollment in comprehensive transition or post-secondary educational programs;
- workplace readiness training; and
- instruction in self-advocacy, including peer mentoring.

This significantly expands both VR services and the population of students who are eligible for receiving services. VR agencies play a key role with increased responsibilities to improve employment outcomes and assist students to achieve CIE. Both VR and schools must be involved in creating opportunities for students to prepare for careers in the 21st century.

Each of these services are described below, with examples from states of how they are being implemented, in addition to specific strategies and resources. For example, in Maryland, the Division of Rehabilitation Services (DORS) developed a Pre-ETS case type to add to its case management system. This allows non-VR students with disabilities to receive Pre-ETS case management from a VR counselor without having to an open case. In addition, the state developed a student information form to collect information about the students being served, to be responsive when and if the state goes into order of selection.

In Nebraska, the state VR agency developed a separate service category for Pre-ETS, thereby allowing VR counselors to work with students with disabilities who may not be VR clients. They developed a Pre-ETS consent and release form for VR to deliver Pre-ETS to youth between 14 and 21 years old. Students who are in the Pre-ETS category are considered to be potentially eligible for VR services but would still need to go through the full VR application to determine eligibility for VR employment services (WINTAC, 2017c).

In Iowa, the ASK Resource Center provides the examples of the types of activities shown in Table 6 that can be completed by VR, schools, and families when considering each of the Pre-ETS.

### **Table 6. Iowa Examples of Coordination of Pre-ETS Activities**

Activity	VR	Schools	Families
Job Exploration Counseling	Tour a local employer with students to show and explain all different jobs and their requirements	Show students videos about different career fields or post-high school education programs	Visit places that relate to youth's interests and could be considered for work opportunities
WBL	Schedule a short-term experience where youth can learn a new skill	Plan and provide job shadowing opportunities in school or community places of employment	Volunteer with the student at a place that matches the youth's interest or strengths
Counseling on Opportunities for Post-Secondary Ed	Coordinate tour of training or community employment options in line with student interests	Visit (online or in person) post high school learning or training programs	Have high expectations! Visit education or training options with youth
Workplace Ready Training	Provide on the job coaching for student at workplace that he/she desires as career	Provide on the job instruction of skills necessary to be competitively employed	Give student responsibilities at home. Ensure student arrives to school/work well groomed, rested, and fed
Self-Advocacy Instruction	Practice job interviews and strategies for effective advocacy	Encourage/foster student involvement in IEP transition planning	Encourage student decision making at home and in community settings

Source: ASK Resource Center, (2017). The Workforce Innovation and Opportunity Act: What it means for Iowa youth, families, and schools. ASK Resource Center. Retrieved from <https://www.askresource.org/filesimages/ASK%20Info%20Sheets/WIOA%20info%20sheet.pdf>

## Examples of Pre-ETS Activities

## Job Exploration Counseling

Job exploration counseling can include a variety of activities related to student exploration of career options and opportunities. Job exploration fosters motivation, problem-solving, and decision-making about possible careers and future occupations. These activities are often provided in conjunction with private, for-profit, public or nonprofit businesses in the community and/or through web-based resources. Job exploration is part of career development that will occur over time but is usually an important step or set of steps. Given that Pre-ETS can be offered to students as young as 14, it would make sense that an early service for younger students would be job exploration counseling.

According to WINTAC, Career Counselors could work in a high school with youth with disabilities to explore career options either as a group or individually, either in person or virtually. Job exploration counseling may include discussion or information on:

- the student's vocational interest inventory results;
- the labor market;
- in-demand industries and occupations;
- non-traditional employment options;
- administration of vocational interest inventories;
- identification of career pathways of interest to the students; and
- career awareness activities to develop personal work values, identify career pathways, and connect skills and qualifications with careers.

WINTAC provides a list of job exploration counseling resources at:

<http://www.wintac.org/topic-areas/pre-employment-transition-services/resources/resources-job-exploration-counseling>

### Examples of Job Exploration Counseling

- Course on career choices
- Attend a career fair at the high school or post-secondary setting
- Virtual job shadows
- Bring in community members for mock interviews
- Guest speakers in different fields
- Education around the labor market
- Providing career interest inventories
- Exploring online tools such as O\*NET
- Group Discovery Class

- Community outings with an employment focus
- Job Clubs

(Source: Job Exploration Counseling Ideas Presented by DePeel, Perdue, & Catherwood, 2017)

### Examples of Job Exploration Counseling Activities

- Career (Vocational) Interest Inventories and Assessments - Career assessments come in a variety of formats and rely on both quantitative and qualitative methodologies. Career assessments can help students identify their unique personality, strengths, interests, values, and skills for a certain career. Career interest inventories typically ask students to rate how much they would enjoy doing certain jobs or job tasks. By rating their levels of interest in a wide range of occupations, these inventories help young people recognize their predominant interests and preferences (Timmons, Podmostko, Bremer, Lavin, & Wills, 2004). Career assessments can be used in school classes, in afterschool and community youth programs, in workforce development programs, and at home (Timmons, Podmostko, Bremer, Lavin, & Wills, 2004, pp. 3-12).
- Career Speakers - Bringing employers into schools to talk to students can provide an overview of a specific job or career area. These sessions are typically informative, motivational, and provide recommendations for additional career exploration activities.
- Career and Technical Student Organizations - Vocational organizations are based in high schools and career technology centers. Students may engage with these organizations (e.g., DECA, Future Business Leaders of America) as part of their school day and as an extracurricular activity.
- Course of Study Aligned with Career - Many schools now have individual plans of study (or in IDEA courses of study) that all students are required to complete during their ninth-grade year. These programs often incorporate school courses that align with an identified career pathway, discuss information about career pathways, and help students identify career pathways of interest to them.
- Discovery - This process is an evidence-based and person-centered alternative to standardized assessments and evaluations. Discovery involves getting to know a person before supporting him or her in developing a plan for employment.
- Job Shadowing - Job shadowing is a work experience option where students

learn about a job by physically visiting the job and shadowing a worker. The job shadowing work experience allows initial experience in a workplace and for the student to gain firsthand knowledge of the work environment, occupational skills and values. Job shadowing is designed to increase career awareness, and share real-life experiential learning that reinforces the link between school-based learning and work requirements.

- Informational Interviews - This is a structured conversation with an employee working in a career area of interest to the student. It is an effective way to learn about a career by talking with someone about the job. It is not a job interview, but rather a way for the student to learn specifics about a specific business or job. This conversation can oftentimes be combined with a job shadow experience.
- Labor Market Statistics and Trends - Students may research labor market statistics and trends to learn about certain careers and occupations and the potential for employment. The DOL's O\*NET occupational system provides career interest inventories in which the results are tied to labor market statistics and occupational requirements and qualifications (O\*NET OnLine, 2018).

(Source: National Technical Assistance Center on Transition, 2017)

## **Integrated WBL Experiences**

Since 2007, researchers have synthesized evidence-based practices for transition across several domains including: academic preparation, student self-determination, family involvement, interagency collaboration, and WBL (Cobb & Alwell, 2007; Test et al., 2009; National Collaborative on Workforce and Disability for Youth (NCWD/Youth, 2009, 2018). While all of these domains are important to youth transitioning successfully, integrated work experiences have consistently been identified as the most important predictor of post-school employment success for students with disabilities, regardless of disability or intensity of their special education needs (National Technical Assistance Center on Transition, 2017).

According to WIOA, WBL experiences may include in-school or after-school opportunities, as well as experiences outside the traditional school setting and/or internships. However, both Federal policy and research indicate that the most effective WBL experiences are those provided in real community-based integrated

employment settings (Langi, Oberoi, Balcazar, & Awsumb, 2017; Carter, Austin, & Trainor, 2012).

WBL has been defined by the National Collaborative on Workforce and Disability for Youth as an educational approach that uses the workplace or real work settings to provide students with the knowledge and skills that will help them connect their in-school experiences with real work activities leading to future career opportunities (Federal Partners in Transition, 2015). Such opportunities should be a supervised program sponsored by an educational or training organization (such as VR) that links the knowledge and experiences gained from an integrated worksite with the student's planned program of study and post-school goals for employment (Federal Partners in Transition, 2015). WBL experiences range in levels of intensity, structure, and scope depending upon the student's stage of career development. WBL experiences may include activities such as work-site visits, informational interviews, job shadowing, paid and unpaid internships, structured on-the-job training, and working as an apprentice or full employee. It is essential that direct employer or community involvement be a component of the WBL to ensure in-depth student engagement and that WBL opportunities be provided in conjunction with private, for-profit, public, or non-profit businesses (WINTAC, n.d.).

WBL helps youth with disabilities to

- gain basic workplace skills that can only be effectively developed in real-world employment settings (e.g., teamwork, communication, problem solving; customer service and social etiquette skills),
- develop knowledge of specific occupational skills, and
- understand the range of occupations and industries in order to develop a career pathway and make informed career choices.

Career development is a life-long activity, and starting early is important. The continuum of career development, illustrated by the NTA's (n.d.) Career Development Timeline available at [https://transitionta.org/sites/default/files/postsecondary/Timeline\\_8-6.pdf](https://transitionta.org/sites/default/files/postsecondary/Timeline_8-6.pdf), begins as early as elementary school with self-exploration activities. Young people further their knowledge and skills through a wide range of career exploration experiences from middle through high school, and then advance into a phase of career planning and management that moves all the way through to post-secondary education and training. Work-based learning activities are important throughout this continuum.

Early transition planning is important to successful career development. Participating in WBL over the course of a student’s high school and transition years allows students to move through the different phases of career development—from career awareness, to exploration, to career preparation (including post-secondary training), and finally leading to not only obtaining a job, but a strong career path (vanBruinswaardt, Solberg, & Jarukitisakul, 2015). Successful WBL programs—especially when there is strong collaboration between schools, VR, community organizations, and the wider business community—offer employers contact with potential long-term employees. In fact, having opportunities for paid WBL experiences prior to exiting high school is one of the strongest predictors of post-school employment and post-secondary education (Mazzotti, Test, & Mustian, 2012).

**Table 7. Understanding Work-Based Learning (WBL)**

<b>WBL is</b>	<b>WBL is NOT</b>
Driven by student identified career interest	Placing students in school settings that do not align with student interests and preferences
A meaningful work experience in an integrated community-based workplace	Students working in a segregated or sheltered work environment (e.g., sheltered workshop)
A continuum of workplace opportunities that occur throughout the student’s secondary years	Isolated, one-shot event, activity, or experience that is not tied to student career pathways
Include structured and explicit learning, experiences, and skill development goals	Learning by passive experiences such as only through reading a book
Students engaging in real work activities in an integrated community-based workplace	Students performing simulated, non-work, or sheltered workshop-type tasks in school settings
Evaluated and assessed by a variety of participants (student, professional, employer, parent, etc.)	Students placed in work experience without assessments or evaluations regarding the experience (Transition Coalition, 2019).

**Workplace Know-How: Skills that Students Learn in Integrated WBL**

- Networking

- Enthusiasm and Attitude
- Professionalism
- Communication Skills
- Teamwork
- Problem-Solving & Critical Thinking

(Source: Office of Disability Employment Policy, 2011)

Keep in mind that just being on a jobsite or practicing work-related skills in school is not enough to ensure that students with disabilities are developing the skills that will lead to integrated employment. In fact, research is clear that in-school and simulated work experiences are much less likely to lead to integrated employment (Carter, E. Austin, D. & Trainor, A., 2011; Certo et al., 2008). Most research points to the necessity of meaningful work experience in an integrated community setting when designing WBL (Langi, Oberoi, Balcazar, & Awsumb, 2017). These features must be considered when schools and VR collaborate to develop and offer effective Pre-ETS and transition services.

School and VR partners can identify a wide range of integrated work sites to support youth with disabilities in making informed career choices and translating their experiences into career self-knowledge. WBL experiences must be meaningful and authentic if they are to make a difference for the student. In addition, WBL must be age- and career stage- appropriate; meaning that as students progress through school, their experiences should follow the stages of career development from awareness (for younger students); to hands-on exploration aligned with student preferences and interests; to career preparation in integrated work settings. Most importantly, the students themselves must be fully involved in choosing and structuring their career experiences, with clear and measurable career outcomes and goals established.

Nebraska is supporting several unique Pre-ETS WBL activities. For example, schools can apply for funding for summer transition programs to support students in WBL experiences between school years. In addition, they support Project SEARCH as an evidence-based Pre-ETS that not only supports WBL, but also promotes many of the other Pre-ETS areas (e.g., self-advocacy, job readiness, counseling on post-secondary education) (Project SEARCH, 2018). The VR agency developed an application process that schools can complete to receive funding to support their summer work experiences and Project SEARCH.

Alaska Department of Vocational Rehabilitation (DVR) uses a multi-pronged approach to providing Pre-ETS, including a summer transition campus for rural villages and students in juvenile justice facilities. They hire special educators trained in implementing effective workforce development experiences who fly into remote areas to hold the 3-5-day camps. They coordinate with the business community to engage in job exploration and work-based opportunities. The collaboration between the Alaska DVR, schools, and communities is what makes these experiences successful.

### HELPFUL RESOURCES FOR WBL

- Fact Sheet: What to Know about Work Based Learning Experiences for Students and Youth with Disabilities (November, 2015) by Federal Partners in Transition: <https://www2.ed.gov/about/offices/list/osers/transition/products/fpt-fact-sheet--work-based-experiences--11-5-15.pdf>
- Promoting Quality Individualized Learning Plans throughout the Lifespan: A Revised and Updated ILP How to Guide 2.0, developed by the NCWD/Youth: <http://www.ncwd-youth.info/wp-content/uploads/2018/03/Promoting-Quality-ILPs-Throughout-the-Lifespan-WEB.pdf>
- Quick Guide: Preparing Students for Competitive Integrated Employment (January, 2016) by National Technical Assistance Center on Transition: [www.TransitionTA.org](http://www.TransitionTA.org)

According to WINTAC (n.d.), work-based learning experiences may include the following:

- Apprenticeships
- Job Shadowing
- Career Mentorship
- Career Related Competitions
- Informational Interviews
- Paid Internships
- Non-paid Internships
- Practicum
- Service Learning
- Student-led Enterprises
- Paid Work Experience

- Non-Paid Work Experience
- Volunteering
- Workplace Tours/Field Trips

Learn more at: <http://www.wintac.org/topic-areas/pre-employment-transition-services/overview/work-based-learning-experiences>.

## **Counseling Opportunities on Enrollment in Comprehensive Transition or Post-secondary Educational Programs**

During the early stages of student planning for post-secondary education, career decision making is an important component. Understanding careers and planning for post-secondary education requires learning about the wide range of career pathway options and labor market realities and projections.

The DOL has created clusters of careers to help schools provide instruction and student experiences. The coordination of career cluster programs in schools is often the responsibility of Career and Technical Education (CTE) offices and programs. Most CTE programs organize using the 16 career categories encompassing a wide range of occupations. These 16 career pathways describe occupations beginning with entry-level position and extending to jobs at the professional level. Typically, career counseling can then focus on supporting students to understand the varying levels of education and training required to be successful in certain occupations within a career pathway.

Choosing a career requires student exploration and planning, and in this respect, job exploration may play a role. What distinguishes job exploration counseling from counseling for post-secondary education is the focus on the counseling efforts. For example, job exploration is often focused on early exploration and awareness of the 16 career pathways. Students may participate in career interest inventories to identify the pathways they feel are best matched to their strengths, preferences, and interests.

Career counseling for post-secondary education will typically occur as students with disabilities are considering their transition to future goals. Perhaps this occurs earlier in the student's academic experiences, but certainly it should occur by their junior year, when most students take the entrance exams that may be required for admission to post-secondary settings (vocational training, community college, or university).

Counseling can take place either as a group or on an individual basis. Some examples of services offered to groups might include providing information about

- course offerings,
- career options,
- types of academic and occupational training needed to succeed in the workplace, and
- post-secondary opportunities associated with career fields or pathways.

Other individualized services that can support a smooth transition from high school to post-secondary education include

- advising students and parents or representatives on academic curricula required at a particular post-secondary setting,
- providing information about college applications and admissions processes,
- supporting a student (and family) to complete the Free Application for Federal Student Aid (FAFSA), and
- providing resources that may be used to support individual student success such as
  - documenting and advocating for academic accommodations;
  - identifying preferences, interests, abilities, talents, needs, learning style preferences and goals;
  - promoting use of executive function skills;
  - assisting with researching career and post-secondary options;
  - participating in post-secondary preparation classes;
  - connecting students with specific post-secondary resources and services;
  - identifying financial aid options;
  - taking career vocational assessments;
  - familiarizing students with education and vocational laws outside of IDEA;
  - identifying technology and assistive technology needs;
  - attending college fairs and tours;
  - applying for VR services, if eligible;
  - providing post-secondary information to family members; and

- o accessing services & supports from I/DD services including comprehensive transition programs on post-secondary campuses (WINTAC, 2016).

Information can also be provided about:

- Dual enrollment programs. In these programs, involving collaboration between schools and post-secondary institutions (e.g., universities, community colleges, vocational training schools), students with disabilities can dually enroll in local courses at a post-secondary campus (or where a more comprehensive transition program is created on a post-secondary campus) while still being served under special education. Programs such as Project SEARCH that are housed on college campuses are examples of dual enrollment programs.
- Comprehensive Transition Programs for Students with Intellectual Disabilities (TPSID) These programs are intended to create or expand high quality, inclusive model comprehensive transition and postsecondary programs for students with intellectual disabilities on post-secondary campuses that provide real-world opportunities for youth. These programs may be dually funded between a school district, VR, and the post-secondary setting. Such programs, especially when inclusive, can show strong outcomes related to the transition to integrated employment for youth with intellectual disabilities. See <https://thinkcollege.net/tpsid>.

Proactive planning and counseling - Other strategies that can be jointly funded and coordinated for Pre-ETS when supporting students with disabilities to prepare for post-secondary education include the following:

- Academic Planning: the process of setting your educational goals and determining the best path to meet them. Using an individualized learning plan to guide the planning process has been shown to effectively support the transition to post-secondary education: (See <http://www.ncwd-youth.info/wp-content/uploads/2018/03/Promoting-Quality-ILPs-Throughout-the-Lifespan-WEB.pdf>).
- Information on Accommodations and Services in Post-Secondary Education: providing information on disability support services and linking families and students to such services
- College Affordability Planning: a process that includes evaluating the cost of

attending and identifying resources available for post-secondary education that including personal finances, benefits planning, grants, and loans (federal and private)

- **College and Career Exploration and Selection Process:** the process of exploring post-secondary education and training programs and subsequently identifying options that match identified career goals and personal requirements (this process may also identify whether programs under consideration have an office of disability services)
- *Post-Secondary Education Application and Admission Process* - understanding, completing and filing the required materials within the set timeframe needed to participate in post-secondary education and training programs (National Technical Assistance Center on Transition, 2017)

### Possible Post-Secondary Education Services

- Assist in setting up connections with support agencies (VR, DD services, community college information)
- Tour a local college campus, trade school or transition school
- Complete mock college application paper work
- Discuss requirements for next educational steps
- Connect students with school counselors
- Learn about testing accommodations for SAT and ACT
- Create a peer-mentoring program

(Source: Counseling on Opportunities for Post-Secondary Education and Comprehensive Transition Services Presented by DePeel, Perdue, & Catherwood, 2017)

## Workplace Readiness

WINTAC (n.d.) has described workplace readiness as those traits and characteristics associated with skills necessary to interact with supervisors and co-workers. More recently, they have been referred to as 21st Century (sometimes called soft skills, employability skills or job readiness skills); and identified by employers as cross-cutting skills and behaviors necessary for any job. For the most part, employers are interested in ensuring that their employees possess skills such as professionalism and work ethics, oral and written communication, teamwork and collaboration, and critical thinking and problem solving (Office of Disability Employment Policy, 2011). It has been noted that regardless of what technical skills a job may require, it is often the social/emotional and interpersonal skills that matter (Succi & Wieandt, 2019).

Some of the workplace readiness training services that may be offered to classrooms or groups are those needed to assist students with disabilities to develop social skills and independent living skills necessary to prepare for integrated employment. These services could teach skills such as:

- communication and interpersonal skills;
- financial literacy;
- group orientation and mobility skills (i.e., accessing workplace readiness training or to learn to travel independently);
- networking skills;
- problem-solving and critical thinking;
- professionalism;
- teamwork;
- job-seeking skills; and
- understanding employer expectations for punctuality and performance, as well as other “soft” skills necessary for employment.

The Office of Disability Employment Policy (2011) developed the [Skills to Pay the Bills Curriculum](#) and accompanying handout for youth with disabilities on the [Essential Skills to Getting a Job](#).

In addition to programming to develop social skills and independent living, workplace readiness training may also include the following:

- financial literacy,
- orientation and mobility skills,
- job-seeking skills,
- understanding employer expectations for punctuality and performance, and
- other "soft" skills necessary for employment.

**These types of services should be provided through real-life instruction, or other activities where the student can learn and apply knowledge.** It is critical to

consider how and where workplace readiness is taught. Teaching certain skills in simulated or segregated settings may not be sufficiently robust to generalize to the work setting. In fact, it is well known that the most effective location for developing skills such as problem-solving, communication, and social skills are in the locations where those skills are needed. Systematic instruction to pre-teach and support social

skills and independent living will only be successful if students have the opportunity to apply what they have learned in real-world settings.

For example, in Maryland, the Division of Rehabilitation Services (DORS) has developed a partnership with the Chesapeake Community College to develop courses on workplace readiness that are offered in the community college setting. Any student (with or without a disability) can enroll. The Maryland DORS partnered with two local agencies to develop the work readiness courses which are now approved by the Maryland Higher Education Commission. Maryland VR is now able to fund students with disabilities to participate in the classes, but because the classes are already integrated within the community college, any student can enroll in the class, and they do not need to be a DORS client.

In Alaska, the Division of Vocational Rehabilitation (DVR) hires special educators to support an after-school work readiness program, called JOBZ Clubs. So far, they have supported 18 after-school clubs that use curricula such as *Skills to Pay the Bills* to support student job readiness (Office of Disability Employment Policy, 2011; Alaska Department of Labor and Workforce Development, 2011). They also partner with regional training centers that focus on the development of industry-specific skills (e.g., mining, carpentry, etc.) through partnerships with schools, industries, tribal grants, and the DOL. DVR uses funding to support students with disabilities to participate in these training centers. These partnerships are now up and running in 24 of the 54 school districts in Alaska.

Independent living skills can also be supported as Workforce Readiness Training and include the following:

- hygiene,
- time management,
- healthy lifestyle,
- using a cell phone,
- using transportation,
- money management,
- nutrition/meal preparation,
- accessing and navigating the community,
- community participation and membership,
- civic responsibility,
- community safety,

- developing friendships,
- appropriate dress, and
- appropriate behavior (WINTAC, n.d.).

## **Instruction in Self-Advocacy**

VR agencies may provide or arrange for the provision of instruction in self-advocacy as a required activity under Pre-ETS. This instruction may be provided in a group setting or on an individual basis. It is important that students learn about their rights and responsibilities, and how to request accommodations or services and supports needed during the transition from secondary to post-secondary education and CIE. Students may conduct informational interviews or work with a peer mentor, educational staff, and/or employers, to develop these skills. It is anticipated that self-advocacy skills will enable students to advocate for any employment support services, including auxiliary aids and services and accommodations that may be necessary for training or employment.

Instruction in self-advocacy services may be provided through generalized classroom lessons in which students

- learn about their rights and responsibilities;
- learn how to request accommodations or services and supports; and
- communicate their thoughts, concerns, and needs, in order to prepare them for peer mentoring opportunities with individuals working in their area(s) of interest.

These services can also be provided through individualized opportunities that include allowing students to:

- conduct informational interviews;
- receive mentoring with educational staff such as principals, nurses, teachers, or office staff;
- receive mentoring with individuals employed by or volunteering for employers, boards, associations, or organizations in integrated community settings; and
- participate in youth leadership activities offered in educational or community settings (WINTAC and TransCen, 2017).

ODEP provides extensive resources and information about employment accommodation through The Job Accommodation Network (JAN, <https://askjan.org/>). JAN has qualified people to help students, employers, and workers with disabilities find the best accommodation solutions. Another excellent resource published by the National Collaborative on Workforce and Disability for Youth is The 411 on Disability Disclosure: A Workbook for Youth with Disabilities, online at <http://www.ncwd-youth.info/publications/the-411-on-disability-disclosure-a-workbook-for-youth-with-disabilities/> (National Collaborative on Workforce and Disability for Youth, 2005). The workbook helps young people make informed decisions about whether or not to disclose their disability and understand how that decision may impact their education, employment, and social lives.

## Peer Mentoring

As discussed earlier, peer mentoring may be provided as part of self advocacy instruction, a required service under Pre-ETS, and has been defined as a process through which a more experienced individual encourages and assists a less experienced individual to develop his or her potential within a shared area of interest. The resulting relationship is a reciprocal one in that both individuals in the partnership have an opportunity for growth and development. Peers are individuals who share common characteristics, attributes, or circumstances. They should have experience within that common area along with additional training in how to assist another in acquiring skills, knowledge and attitudes to be more successful.

Mentoring relationships may take different forms:

- **Peer Mentoring:** A person close in age to his or her mentee may act as a sounding board for ideas and plans and provide guidance in an informal manner.
- **Disability Mentoring:** A person with a disability mentors another person, usually with a similar disability. The relationship generally focuses on a specific area such as living independently, recovering from a traumatic event, obtaining employment or being new to the workforce. The mentor serves as a role model and provides information and guidance specific to the mentee's experience.
- **Group Mentoring:** A mentor may work with a group of mentees.
- **E-mentoring:** An adult mentors a young person through email or Internet communications (Office of Disability Employment Policy, n.d.).

When identifying potential mentors, the following factors should be considered:

- expertise in the career area or occupation,
- flexibility,
- good people skills,
- enthusiasm,
- comfort level with youth and young adults,
- ability to identify potential problems and find solutions,
- ability to provide constructive evaluation and feedback to nurture learning,
- ability to perceive possible benefits to mentoring, and
- ability to pass background check (WINTAC, n.d.).

Mentoring relationships can contribute to positive self-esteem and identify realistic career and academic goals. Research indicates that mentoring is especially effective in helping youth with disabilities transition into the workplace and adulthood (Lindsay & Munson, 2018; ODEP, n.d).

### Possible Self-Advocacy Practices

- Encourage student-led IEP meetings
- Complete person-centered profiles
- Encourage students to complete self-advocacy goals (e.g., setting a calendar, making medical appointments, etc.)
- Teach workplace self-advocacy skills (e.g., using a time card, requesting vacation, etc.)
- Encourage students to research and access local service providers independently
- Talk about/teach a class around how to identify support needs and how to ask for support at work or college
- Teach a class on disability disclosure

(Source: Strategies to Promote Instruction in Self-Advocacy Presented by DePeel, Perdue, & Catherwood, 2017)

## Section IV: Title I of WIOA - Workforce Development, American Job Centers, and Employers

Changes made to the Rehabilitation Act under WIOA are not the only part of the statute providing significant opportunities for individuals with disabilities to find, obtain, and succeed in CIE. Under Title I of WIOA, Congress made significant revisions to WIA's One-Stop network, first launched in 1998 and re-branded nationally under WIOA as the "American Job Center network," including changes to the way services are offered, made accessible, and funded for individuals with barriers to employment, including people with disabilities.

The American Job Center network includes American Job Centers (AJCs) located in regions in every state across the country to provide job seekers and workers of a variety of different backgrounds with career training, and necessary supportive services to obtain and maintain high-quality jobs. AJCs streamline and consolidate a range of public workforce services and maintain trained staff that can navigate the various parts of the public workforce system to align and make accessible a wide range of publicly and privately funded education, employment, and training programs. Several core programs are provided by the AJCs:

- Title I Adult, Dislocated Worker, and Youth programs;
- Title II Adult Education and Family Literacy Act (AEFLA) program;
- Wagner-Peyser Employment Service (ES) program, authorized under the Wagner-Peyser Act as amended by Title III of WIOA; and
- Vocational Rehabilitation Program, authorized under Title I of the Rehabilitation Act of 1973.

The AJC network consists of local Workforce Development Boards (WDB), core partner programs across DOL, ED, the Department of Health and Human Services, and the Department of Housing and Urban Development, one stop partners, AJC operators, and service providers. WIOA requires an integrated approach to the implementation, administration, service delivery, and evaluation of the services provided under the core programs at the Federal, State, and local levels. State and local WDBs may include (as members) community organizations that provide or support CIE for individuals with disabilities. Included among the State WDB's

responsibilities are the development of strategies to support career pathways for individuals with disabilities to enter and retain employment (Hoff, 2014). Local WDBs must work with the State Board to ensure individuals with disabilities can exercise consumer choice by, among other things, identifying a wide array of potential career service providers and awarding contracts, where appropriate, to ensure sufficient access to services for individuals with disabilities, including opportunities that lead to CIE for people with disabilities (20 C.F.R. § 679.380).

Under WIOA, all comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 C.F.R. part 38, the regulations implementing the non-discrimination and equal opportunity provisions of Section 188 of WIOA, 29 U.S. Code § 3248, and such accessibility is to be certified annually. Programmatic accessibility includes providing reasonable accommodations for individuals with disabilities; making reasonable modifications to policies, practices, and procedures; administering programs in the most integrated setting appropriate; communicating with persons with disabilities as effectively as with others; and providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity (LEAD, 2019). WIOA Section 188 also prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief in any WIOA Title I-financially assisted program or activity. Important to the overall discussion in this Essential Guide, the provisions in the Section 188 regulations concerning individuals with disabilities generally parallel the requirements under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (29 C.F.R. §38.4(q)).

The LEAD Center has developed a guide to provide important information and technical assistance on promising practices that can help AJCS and their partners in the workforce development system in meeting the requirements of Section 188 as they pertain to serving people with disabilities. The guide can be found at: [http://www.leadcenter.org/system/files/resource/downloadable\\_version/Promising-Practices-in-Achieving-Nondiscrimination-and-Equal-Opportunity-A-Section-188-Disability-Reference-Guide.pdf](http://www.leadcenter.org/system/files/resource/downloadable_version/Promising-Practices-in-Achieving-Nondiscrimination-and-Equal-Opportunity-A-Section-188-Disability-Reference-Guide.pdf).

## “Individuals with Barriers to Employment”

The purposes of Title I of WIOA include:

- Increasing access to, and opportunities for individuals to receive, the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those with barriers to employment, including people with disabilities and out-of-school youth with the goal of improving their outcomes;
- Streamlining service delivery across multiple programs by requiring colocation, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including people with disabilities and those with other barriers to employment, and businesses (LEAD, 2016),

WIOA defines “individuals with barriers to employment” to include “individuals with disabilities, including youth who are individuals with disabilities,” as well as, *inter alia*, displaced homemakers, low-income individuals, Indians, Alaska natives, native Hawaiians, older individuals, ex-offenders, homeless individuals, youth who have aged out of the foster care system, and English language learners (29 U.S.C. § 3102(24)).

Among other things, the AJC network is designed to provide individuals with barriers to employment with coordinated service delivery that will enable them to prepare for, obtain, retain, and advance in high-quality jobs and high-demand careers. WIOA recognizes that there may be services provided under its Title I programs that may serve individuals with disabilities who are already enrolled in the VR system, if and when those same individuals are concurrently eligible for other public workforce programs. Consequently, AJC staff should be cross-trained to aid job-seekers who may be eligible for more than one program and to facilitate the leveraging and braiding of resources across systems for individual customers, including individuals with disabilities (U.S. Department of Labor, 2017).

Under Title I of WIOA, individuals with barriers to employment, including adults and youth with disabilities, are eligible for a range of services including assistance to job-seekers; hard and soft skill guidance, career planning, and job placement services; labor market demand and occupational information; job-driven training options, including work-based training opportunities; and, as mentioned, the leveraging and

braiding of resources across systems. Notably, the AJC network may provide individuals with disabilities with, among many other things,

- career pathways,
- pre-apprenticeship and apprenticeship opportunities,
- on-the-job training,
- financial literacy training, and
- incumbent worker training.

AJCs can adopt alternative assessment strategies from Customized Employment such as discovery and group discovery (LEAD, 2015) and the use of inclusive career pathways (LEAD, 2018) to assist individuals with significant disabilities in entering and sustaining CIE.

## **American Job Centers and Employers**

Importantly, all workforce development activities conducted by AJCs on behalf of people with disabilities are performed within the context of the regional economy that the AJCs serve and must be informed by labor market data and information about the employer base and labor market demand in that region.

Most notably, the AJCs are charged with undertaking business engagement strategies within the region. To fulfill these obligations, each AJC should plan to engage businesses regionally in hiring people with disabilities, including those eligible for VR services. For example, AJCs are charged with providing “business services” through the AJC network to assist businesses and industry sectors in recruiting, retaining, and developing the on-boarding of talent for the regional economy (20 C.F.R. § 678.435, 2019; 34 C.F.R. §§ 361.435, 463.435, 2019). To effectuate these requirements, AJC plans must include customized screening and referral of people with disabilities to employers. It should also include outreach and education to employers about the diversity and talent of the candidate pool that includes people with disabilities in the region. These efforts can include industry sector strategies for the hiring of people with disabilities, and public-private partnerships.

## Memoranda of Understanding

AJCs are required to enter into an MOU to effectuate and fully develop their one-stop relationships. AJCs should include all necessary partners that serve people with disabilities in this MOU, including the VR agency, employers, service providers, and other referral partners. Moreover, the MOU should specify the services available to people with disabilities and the relationships it has with employers in the region committed to hiring people with disabilities. For more information, see the [Sample MOU](#) provided by the Employment and Training Administration's (ETA) Workforce GPS Innovation and Opportunity Network.

## Section V. Out-of-School Youth with Disabilities

There are an estimated 4.4 million 16- to 24-year-old individuals who are not employed and not in school across the country, including youth with disabilities (Measure of America, 2019). These youth often fall out of reach of the traditional VR and disability service systems. Moreover, many of these same youth exit school without a high school credential and never enter, let alone matriculate from, institutions of higher education, making their emergence into the labor market increasingly difficult. Without accounting for disability, the data demonstrates barriers that such youth face: young adults with a bachelor's degree earned 103 percent more than those with a high school credential, 62 percent more than young adult high school completers, and 29 percent more than associate's degree holders (National Center for Education Statistics, 2016).

WIOA's provisions pertaining to OSY with disabilities demonstrate a commitment to finding and providing services to those students that may have never been given a meaningful or informed choice to work in CIE prior to exiting school, who may have been placed at serious risk of segregation when they were in school, and who now remain out of the labor market. These same youth require intensive individualized career development services—the cornerstone of which is intensive work experiences—to enter the job market and to find and sustain CIE.

WIOA Title I establishes a priority of service delivery to OSY, including OSY youth with disabilities. Under these new changes,

- 75 percent of the youth formula program funds must be committed to OSY (as compared with only 30% under WIA); and
- at least 20 percent of local youth formula funds must be committed to work experiences such as summer jobs, on the job training, and internships. (29 U.S.C. § 3164(a)(4)(A) and 29 U.S.C. § 3164(c)(4)).

### WIOA Definition of Out-of-School Youth

WIOA makes important revisions to the way the public workforce system serves OSY under the youth formula program. Under the former WIA, the term “out-of-school youth” was simply defined as “an eligible youth who is a school dropout, or an

eligible youth who has received a secondary school diploma or its equivalent but is basic skill deficient, unemployed or under-employed.” (WIA § 101(33), Pub. L. 105-220, 112 Stat. 936, Aug. 7, 1998). However, under Title I of WIOA that definition is expanded significantly to include individuals who are not attending any school and are between the ages of 16 and 24 (with specific reference to youth with disabilities) (29 U.S.C. § 3164(a)(1)(B)).

Specifically, WIOA defines “out-of-school youth” as an individual who is between 16 and 24 years old and not attending any school and who is one or more of the following:

- a school dropout;
- a youth within the age of compulsory school attendance, but who has not attended school for at least the most recent complete school year calendar quarter;
- a recipient of a secondary school diploma or equivalent who is low-income and is either basic skills deficient or an English language learner;
- an offender;
- a homeless individual or a runaway;
- an individual in foster care or one who has aged out of the foster care system or a child eligible for assistance under section 477 of the Social Security Act or in an out-of-home placement;
- an individual who is pregnant or parenting;
- **an individual with a disability**; or
- an individual who is low-income and requires additional assistance to enter or complete an educational program or to secure or hold employment (29 U.S.C. § 3164(a)(1)(B)).

## Services Available

WIOA sets forth several expectations and requirements for service providers to increase recruitment and maintain enrollment of OSY to specific programs. Funds for youth programs are distributed by DOL to states and are typically administered by the local Workforce Development Board (WDB). Youth program funds are often distributed to area-specific service providers. As mentioned, WIOA requires states to spend 75% of funds allocated for youth programs to OSY. This is a change, as under WIA, only 30% of the youth budget was required to be used specifically for OSY.

WBDs are required to have a competitive selection process for organizations to receive grant funds. The only exception is if a WBD determines that there are not sufficient service providers in a specific area. WBDs do maintain flexibility in how they distribute the required services and can choose to directly deliver the services themselves. Regardless of whether WBDs or area service providers deliver youth services, they are expected to administer assessments to participants before the beginning of the program, provide supportive services, and have follow up services available for up to 12 months. WIOA also requires that assessments must be accessible to youth with disabilities, or that an alternative method, such as observation, is used in order to assess a participant's competencies in a manner that measures their abilities, preferences, and strengths. All services in the program must be accessible, and providers must provide reasonable accommodations to youth with disabilities.

There are fourteen activities or program elements that must be provided to OSY. Given that graduation rates of youth with disabilities lag significantly behind their peers without disabilities and that they are over represented among foster care, juvenile justice, homeless and child welfare OSY youth populations, many young people with disabilities are likely to benefit from these services (Fernandes-Alcantara , 2015; National Law Center, 2017). In a number of instances, the program elements are the same as the transition services offered by VR agencies to students with disabilities, including

- tutoring, study skills training, instruction and drop-out prevention strategies;
- alternative secondary school offerings;
- paid and unpaid work experiences (including academic and occupational education components);
- leadership development activities;
- supportive services (transportation, child care, dependent care, and housing);
- adult mentoring;
- follow-along services for 12 months after program completion;
- guidance and counseling (including drug and alcohol counseling);
- integrated education and training (specific occupation or cluster);
- financial literacy education;
- entrepreneurial skills training;
- labor market information for in-demand industry sectors and occupations; and
- post-secondary preparation and transition activities.

WIOA requires that at least 20% of the funds allocated to each area be used on work experiences. Those expenditures can include but are not limited to identifying work experience for youth or providing training for youth and employers, job training for the work experience, and stipends or incentives tied to the successful completion of a work experience.

Given WIOA's requirement that 75 percent of youth funding be committed to serving OSY, coordination between Title I Youth Programs and other core programs including Title II AEFLA and Title IV VR programs will be important to serving OSY and ISY with disabilities effectively. Local WDBs should coordinate with VR agencies and educational agencies in serving in-school youth with disabilities and complement services provided by those agencies with WIOA services that VR agencies and LEAs are not able to provide. The United States Departments of Education and Labor (2019) have identified the following as examples of possible collaboration opportunities:

- **Coordinating referrals across the two programs.** Both the WIOA Youth and VR programs may take advantage of the strengths of each other's program and make cross-agency referrals. For example, VR agencies can refer youth with disabilities, particularly those who are out of school, to the WIOA Youth program for training and work experience services. Likewise, WIOA Youth programs can refer students with disabilities, including ISY with disabilities, as appropriate, to the VR program for pre-employment transition services provided through funds reserved for such services, transition services, and VR services. WIOA Youth programs can also refer OSY with disabilities to the VR program for VR services, as appropriate.
- **Developing linkages for recruitment and placement.** VR program staff and WIOA Youth program staff can collaborate on providing business services to better serve employers and to meet the needs of students and youth with disabilities more effectively. WBL experiences under pre-employment transition services can align with work experiences offered through the WIOA Youth program. The two programs may also share business account information to ensure efficient and effective service delivery to employers and to ensure the best candidates from both programs are referred to employers for employment, work experience, or other opportunities.

For providers, there are several challenges to serving OSY, and a number of recommended best practices that are key to delivering quality services. The most persistent challenge is recruiting and maintaining a relationship with “disconnected youth.” Service providers often have a difficult time maintaining a relationship with such youth after initial contact. MDRC (2015) indicates, however, that prior studies have identified the following strategies as important for reaching and engaging out of school youth:

- Financial incentives and opportunities for paid training and work
- Opportunities to feel connected to caring adults and to a community.
- Support services that address a young person’s barriers to participation.

Wilkins (2011) of the National Drop-Out Prevention Center for Students with Disabilities (NDPC-SD) has also specifically identified a number of promising strategies for identifying, engaging with, and re-enrolling OSY with disabilities. These strategies include (a) home visits, (b) information sharing between schools, (c) collaboration with community-based organizations, (d) school expos/reengagement fairs, (e) reengagement/ transition centers, (f) print and electronic media, and (g) communitywide campaigns. In addition, the National Dropout Prevention Center, <http://dropoutprevention.org/>, provides extensive information about effectively serving OSY populations.

Although providing detailed information about effective service delivery strategies under Title I of WIOA is beyond the scope of the Essential Guide, DOL’s Employment and Training Administration (ETA) has a series of webinars and publications to help organizations successfully implement WIOA requirements for OSY, including youth with disabilities. There are many key factors that are vital in implementing successful youth programs. For more information, see the following U.S. Department of Labor resources:

- DOL/ETA’s website, <https://www.doleta.gov/WIOA/>,
- ODEP’s Youth Topics website, <https://www.dol.gov/odep/topics/Youth/>, and
- Youth Connections Community of Practice, <https://youth.workforcegps.org/>, an online community developed by ETA featuring promising practices, technical assistance tools, and peer discussion. .

In addition, numerous real-life promising practice examples have been identified through the Disability Employment Initiative (DEI), <https://disability.workforcegps.org>,

a jointly-funded grant initiative by ODEP and ETA to improve education, training, and employment outcomes of youth and adults with disabilities.

Additional useful resources for serving youth with disabilities under Title I are highlighted in Table 8.

**Table 8. Resources for Serving OSY with Disabilities**

Source	Recommended Resource
The National Collaborative on Workforce and Disability for Youth	<p>Guideposts for Success for Disconnected and Target Populations:</p> <ul style="list-style-type: none"> <li>• Youth in or aging out of foster care, <a href="http://www.ncwd-youth.info/guideposts/foster-care">http://www.ncwd-youth.info/guideposts/foster-care</a>,</li> <li>• Youth involved in the juvenile justice system, <a href="http://www.ncwd-youth.info/guideposts/juvenile-justice">http://www.ncwd-youth.info/guideposts/juvenile-justice</a></li> <li>• Youth with mental health needs, <a href="http://www.ncwd-youth.info/guideposts/mental-health">http://www.ncwd-youth.info/guideposts/mental-health</a>, and,</li> <li>• Youth with learning disabilities, <a href="http://www.ncwd-youth.info/guideposts/learning-disabilities">http://www.ncwd-youth.info/guideposts/learning-disabilities</a></li> </ul>
The National Collaborative on Workforce and Disability for Youth	<p><i>Making the Right Turn: A Research Update on Improving Transition Outcomes Among Youth Involved in the Juvenile Corrections System</i>, <a href="http://www.ncwd-youth.info/wp-content/uploads/2018/05/NCWD-Research-Brief-3_Making-the-Right-Turn_052218.pdf">http://www.ncwd-youth.info/wp-content/uploads/2018/05/NCWD-Research-Brief-3_Making-the-Right-Turn_052218.pdf</a></p> <p><i>Making the Right Turn: A Research Update on Prevention and Diversion for Justice Involved Youth</i>, <a href="http://www.ncwd-youth.info/publications/making-the-right-turn-a-research-update-on-prevention-and-diversion-">http://www.ncwd-youth.info/publications/making-the-right-turn-a-research-update-on-prevention-and-diversion-</a></p>
The National Collaborative on Workforce and Disability for Youth	<p><i>Fostering Inclusive Volunteering and Service Learning</i>. <a href="http://www.ncwd-youth.info/publications/fostering-inclusive-volunteering-and-service-learning/">http://www.ncwd-youth.info/publications/fostering-inclusive-volunteering-and-service-learning/</a></p>
The Institute for Educational Leadership	<p>Right Turn Career-Focused Youth Transition Initiative, <a href="http://iel.org/rightturn">http://iel.org/rightturn</a></p>
United States Department of Labor (ETA)	<p>Factsheet on Updated Apprenticeship Equal Employment Opportunity Regulations, 29 CFR Part 30, <a href="https://www.doleta.gov/oa/eoo/assets-">https://www.doleta.gov/oa/eoo/assets-</a></p>

Source	Recommended Resource
	<p><a href="#">eeo/pdf/EEO Rule Overview Fact Sheet.pdf</a>, (extends nondiscrimination requirement to disability, and adds disability as an element of sponsors' affirmative action programs).</p>
<p>United States Department of Labor (ETA and ODEP)</p>	<p>Training and Employment Notice No. 04-15, <a href="https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6762">https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6762</a> provides information and resources on promising strategies to promote the inclusion of youth and adults with disabilities in registered apprenticeships and pre-apprenticeships.</p> <p>Training and Employment Notice No. 10-09, <a href="https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2805">https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2805</a> describes an issue paper and toolkit on improving transition outcomes for youth and young adults with disabilities through apprenticeship.</p>
<p>ODEP</p>	<p>The ApprenticeshipWorks Guides, <a href="https://www.dol.gov/odep/categories/youth/apprenticeship/Apprenticeship_Guide_for_Educators-Service_Providers.pdf">https://www.dol.gov/odep/categories/youth/apprenticeship/Apprenticeship_Guide_for_Educators-Service_Providers.pdf</a>,</p> <p>The ApprenticeshipWorks Video Series, <a href="https://www.dol.gov/odep/topics/youth/Apprenticeshipworks-video-series.htm">https://www.dol.gov/odep/topics/youth/Apprenticeshipworks-video-series.htm</a></p>
<p>The LEAD Center</p>	<p><i>Inclusive Career Pathways Desktop Guide: Information and Resources to Support Inclusive Programs and Services</i>, <a href="https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/inclusive-career-pathways-desktop-guide.pdf">https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/inclusive-career-pathways-desktop-guide.pdf</a></p>

## Conclusion

As explored in detail throughout this Essential Guide, in recent years, the landscape of law and policy on transition from school to employment for students with disabilities has changed in significant ways. These changes were precipitated, among other things, by landmark federal court cases that clarified and explained the application of the ADA and *Olmstead v. L.C.* to employment-related transition services for youth with disabilities, and Congress' enactment of WIOA, amending provisions of the Rehabilitation Act of 1973 and expanding both the scope of transition services and the population of young people who are eligible to receive them. As the Essential Guide makes clear, these changes to law and policy have complementary qualities, and when read together, reflect tremendous opportunities for state and local governments, youth with disabilities, their families, service providers, employers, and others to drive successful employment outcomes for youth with disabilities in CIE. The time has come for every student with a disability who can and wants to work in CIE after leaving school to do so with the appropriate services and supports.

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