



NEBRASKA

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TO: Chief School Administrators
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FROM: Steve Milliken, SM Administrator
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SUBJECT: Information on the Workforce Innovation and Opportunity Act and the Impact on Students with Disabilities

The following information regarding the federal “Workforce Innovation and Opportunity Act” (WIOA) and its associated federal regulations is designed to assist school staff in understanding how this law impacts services for students with disabilities as they transition from school to adult life. While WIOA governs many aspects of our federal and state system of workforce development (see the U.S. Department of Education’s WIOA resources for additional information), this memo focuses on two specific sections of the law that impact schools and students with disabilities: Section 113, the provision of Pre-Employment Transition Services (Pre-ETS), and Section 511, limitations on the use of subminimum wage.

Pre-Employment Transition Services (Pre-ETS)

- Under Section 113 of WIOA, each state is required to provide Pre-ETS to eligible students with disabilities. In Nebraska, Vocational Rehabilitation (VR) in the Department of Education and the Nebraska Commission for the Blind and Visually Impaired (NCBVI) are the agencies responsible for providing and arranging for the provision of Pre-ETS to eligible students with disabilities. These services can be provided in a group or on an individual basis. Students who may receive Pre-ETS include those aged 14 through 21 who are eligible for special education under the Individuals with Disabilities Education Act (IDEA) and students with a disability for purposes of Section 504 whether or not they are receiving accommodations under Section 504 of the Rehabilitation Act of 1973. Students aged 14-21 determined to be potentially eligible for vocational rehabilitation services may also receive Pre-ETS services.

- The provisions contained in WIOA are not to be construed as a reduction in the responsibilities of a school district to coordinate and to provide transition services as required under IDEA. The Pre-ETS that are provided by VR or NCBVI to a student are meant to be coordinated with other transition services provided by the school district and others, since Pre-ETS is not meant to replace the transition services in a student's Individualized Education Program (IEP), but rather to enhance them.

Pre-ETS that must be offered to all eligible students, based on their individual needs, include the following:

- Job exploration counseling;
- Work-based learning experiences that may include in-school or after-school opportunities or experience outside the traditional school setting (including internships) that are provided in a competitive integrated employment environment with appropriate supports and services to the maximum extent possible;
- Counseling about opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- Workplace readiness training to develop social skills and independent living skills; and
- Instruction in self-advocacy, which may include peer mentoring.

To receive Pre-ETS, students with disabilities, those receiving accommodations under Section 504 of the Rehabilitation Act, or those found to be potentially eligible, do not need to apply to, or be determined eligible for VR or NCBVI. However, additional VR or NCBVI services (e.g., transportation, supported employment and job coaching) may only be available to a student after applying and being determined eligible.

Nebraska VR has assigned staff to every school district to facilitate the coordination of Pre-ETS for all eligible students. VR staff will work with school staff to identify students who are eligible for Pre-ETS. Students with disabilities who need VR services in addition to the required Pre-ETS will need to be determined eligible for VR. VR will use existing records provided by the school district, to the extent possible, to determine eligibility for VR services and assist in transition planning. VR will share evaluations with school districts to support transition IEP services. Through ongoing collaboration, there is an expectation that VR and school districts will work together to ensure the student's Individualized Plan for Employment is coordinated with the IEP.

To refer a student or to learn more about Pre-ETS and VR services, please contact the local office of VR in your region. You can locate the VR contact for your school online at: http://vr.nebraska.gov/students/for_schools.html.

Students who are blind or visually impaired should be referred to NCBVI. NCBVI counselors based in Omaha, Lincoln, Scottsbluff, North Platte, Kearney, and Norfolk will be contacting school districts statewide to coordinate Pre-ETS for all eligible students who are blind and visually impaired. NCBVI will work with the public schools to identify blind and visually impaired students who are eligible for Pre-ETS; and to determine eligibility for

NCBVI services for those who require vocational rehabilitation services in addition to the required Pre-ETS services. NCBVI will use existing records provided by the school district, to the extent possible, to determine eligibility for NCBVI services and to assist in transition planning. NCBVI will share evaluations with school districts to support transition IEP services. Through ongoing collaboration, there is an expectation that NCBVI and school districts will work together to ensure the student's Individualized Plan for Employment is coordinated with the IEP.

To refer a blind or visually impaired student to NCBVI or to learn more about services offered by NCBVI, please contact one of the local field offices in your region. Contact information for each of the NCBVI offices can be found at: <https://ncbvi.nebraska.gov/contact>.

Limitations on the Use of Subminimum Wage

WIOA requires a focus on meaningful opportunities for competitive integrated employment. Section 511 of WIOA places limitations on the use of subminimum wage and will also have an impact for students with disabilities and schools.

As of July 22, 2016, WIOA prohibits school districts from entering into a contract with an entity holding a special wage certificate under Section 14(c) of the Fair Labor Standards Act (often referred to as a Sheltered Workshop Certificate) for the purpose of operating a program under which a youth with a disability is engaged in work at a subminimum wage. Students with disabilities can no longer be placed by their school district in a local sheltered workshop to perform work and receive a subminimum wage.

Schools should refer any student with a disability known to be seeking sub-minimum wage employment to VR or NCBVI and provide documentation regarding the provision of transition services for those seeking sub-minimum wage. This should typically occur as part of the IEP meeting or transition planning process, but must also be done in a manner consistent with the confidentiality requirements of FERPA and/or IDEA.

When requested by VR or NCBVI, the school district must either:

- Provide documentation of completed transition services within the IEP; or
- Provide documentation that the youth or, as applicable, the youth's parent/guardian refuses (through informed choice) participation in transition services.

The proper documentation provided must:

- Include a cover sheet that itemizes the documentation; and
- Contain, at a minimum, the following:
 - Youth's name;
 - Description of the transition service or activity completed/refused within the IEP. If transition services were refused, a reason for the refusal;
 - Name of the provider of the required service or activity;
 - Date that the required service or activity was completed/refused;
 - Signature of educational personnel documenting completion/refusal of the

- required service or activity;
- Date of signature;
- Signature of educational personnel transmitting documentation to VR or NCBVI; and
- Date and method (e.g., hand-delivered, faxed, mailed, e-mailed, etc.) by which the documentation was transmitted to VR or NCBVI or the youth.

The proper documentation must also be:

- Provided in a manner that complies with the confidentiality requirements of the Family Education Rights and Privacy Act (FERPA) and the IDEA.
- Transmitted to VR or NCBVI as soon as possible upon the completion of transition services, but no later than:
 - 30 calendar days after the completion of the required activity or service; or
 - 60 calendar days after the completion of the required activity or service, if additional time is necessary due to extenuating circumstances (extenuating circumstances include unexpected lengthy absence due to illness or family emergency of the educational personnel); or
 - 5 calendar days after a youth has refused to participate in a required transition service.
- Retained in a manner consistent with the federal record retention requirements of 2 CFR 200.333.

Nebraska VR has also developed a number of reporting forms to ensure the required information is transmitted. These forms can be found at:

http://webforms.vr.ne.gov/vr_forms/case_service_guidance_documents

Further guidance on Section 511 implementation is to be released in the near future by the federal Department of Labor and the Rehabilitation Services Administration in the federal Department of Education. As warranted, additional information will be provided by Nebraska VR, NCBVI, and the Office of Special Education.

Should you have any additional questions or need clarification regarding the information found in this memorandum, please contact:

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