

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the Pennsylvania Department of Labor and Industry (“DLI”), through its Office of Vocational Rehabilitation (“OVR”), and the Pennsylvania Department of Education (“PDE”), through the Bureau of Special Education (“BSE”).

Sections 501 and 502 of the Administrative Code of 1929 (71 P.S. §§ 181 and 182) require Commonwealth departments and agencies to coordinate their work and activities with other Commonwealth departments and agencies.

Both the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*, and the Rehabilitation Act of 1973 (the “Rehabilitation Act”), as amended by the Workforce Innovation and Opportunity Act (“WIOA”), 29 U.S.C. §§ 701 *et seq.*, require State Education Agencies (“SEAs”) and Vocational Rehabilitation (“VR”) agencies to plan and coordinate pre-employment transition services and transition services for students with disabilities regardless of the severity of the disability, including those individuals with complex, medical and behavioral support needs, through a formal interagency agreement, or other mechanism for interagency coordination. 20 U.S.C. § 1412(a)(12), 29 U.S.C. § 721(a)(11)(D), 34 C.F.R. § 300.154, 34 C.F.R. § 361.22(b). Additional legal authority referenced in this MOU includes: 34 C.F.R. Part 361, State Vocational Rehabilitation Services Program, 34 C.F.R. Part 363, the State Supported Employment Services Program, 34 C.F.R. Part 397, Limitations on Use of Subminimum Wage, the Work Experience for High School Students with Disabilities Act, 43 P.S. §§ 683.1 *et seq.*, and the Employment First Act, 62 P.S. §§ 3401 *et seq.*

The purpose of this MOU is to ensure that there is a plan of action requiring coordination and collaboration between OVR and BSE to support the transition of students with disabilities from high school to adult life. OVR and BSE will facilitate and coordinate the receipt of pre-employment transition services, transition services, and other Pennsylvania VR services to students with disabilities in order to facilitate their smooth transition from school to post-school employment-related activities and competitive, integrated employment. This MOU will serve as a mechanism for OVR and BSE to clearly specify the plans, policies, and procedures for coordinating services to facilitate the transition of students, including at a minimum:

- pre-employment transition services;

- consultation and technical assistance to assist local educational agencies (“LEAs”) in planning for the transition of students with disabilities;
- a consistent communication plan to facilitate the planning and implementation of policies and procedures for coordinating services to facilitate the transition of students;
- transition planning by VR Case Managers, directed by OVR, and LEAs, directed by BSE, for students with disabilities that facilitates the development and implementation, when appropriate, of individual plans for employment (“IPE”), individualized education programs (“IEPs”), and 504 plans;
- roles and responsibilities, including financial and programmatic responsibilities of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services and pre-employment transition services;
- procedures for outreach to and identification of students with disabilities in need of pre-employment transition services and transition services, including a process for and responsibilities of LEAs in facilitating referrals of students with disabilities to OVR;
- coordination necessary to satisfy the documentation requirements set forth in section 511 of the Rehabilitation Act with regard to students and youth with disabilities who are seeking subminimum wage employment;
- procedures for resolving interagency disputes under this MOU and procedures for LEAs to resolve interagency disputes related to reimbursement for services; and
- an assurance that neither PDE, the Commonwealth’s SEA, nor LEAs, as directed by BSE, will enter into an arrangement with an entity for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.

The parties to this MOU set forth the following as the terms and conditions of their understanding:

1. Consultation and Technical Assistance in Transition Planning.

OVR and BSE will provide consultation and technical assistance to LEAs (including school districts, career and technical education centers, charter schools, regional charter schools, and cyber charter schools) to assist in planning for the transition of students with disabilities from school to post-school employment-related activities, pre-employment transition services, and competitive, integrated employment. The consultation and technical assistance may be provided through alternative means, such as conference calls, video conferences, and shared in-person training opportunities. Examples of sharing in-person opportunities include conference opportunities, regularly scheduled meetings for special education directors, state and local transition planning meetings, and department meetings.

- a. OVR and BSE will consult with and provide technical assistance to LEA administrators, school counselors, transition specialists, families, individuals, public and private stakeholders, community agencies, and teachers including those who work in special education, general education, career technical fields, etc.
- b. OVR and BSE will provide consultation and technical assistance through informational sessions, face-to-face meetings, phone calls, conference calls, skype meetings, webinars, brochures, rack cards, and shared information on the agencies' websites.
- c. OVR and BSE will jointly develop and co-present a communication and training plan by July 1 of each year, using multiple modalities and based upon evidenced-based needs from the field. OVR will require local VR offices and BSE will require Intermediate Units ("IUs") to implement local/regional training(s) and disseminate information/resources based upon the OVR and BSE yearly communication and training plan.
- d. OVR staff will collaborate with LEAs through transition committees and meetings for planning and implementing efforts that are focused on the transition of students with disabilities.
- e. OVR staff will provide consultation and technical assistance during their routine visits to LEAs, during IEP meetings, at conferences, at training activities, and at other times as requested by BSE or LEAs.
- f. OVR and BSE will disseminate information about transition services, pre-employment transition services, processes for outreach, VR eligibility, scope of VR services, effective practices, training opportunities, and other relevant information.

- g. OVR and BSE will meet regularly, as needed, to inform each other about policies or procedural changes that may impact transition services.
- h. OVR and BSE will participate in transition fairs, job fairs, and other activities targeting families and students to increase appropriate referrals during the school year.
- i. OVR and BSE will develop a guidance tool to assist with implementing this MOU.

2. Transition Planning by OVR and BSE that Facilitates Completion of IEPs and Competitive, Integrated Employment for Students with Disabilities.

OVR will work collaboratively with LEAs to facilitate and coordinate the smooth transition of students with disabilities from school to post-school activities that lead to competitive integrated employment, including the receipt of pre-employment transition services, transition services, and other VR services, it being understood that PDE has delegated the responsibility for the coordination of transition services to LEAs, and special education coordinators carry out this responsibility.

OVR will provide consultation for transition planning for students with disabilities to facilitate the development of their IEPs. OVR can provide information, technical assistance, case consultation and information/referral as needed for eligible or potentially eligible students.

OVR will coordinate with non-educational agencies, such as juvenile justice, treatment facilities or foster care programs, for referrals of out-of-school youth with disabilities. These youth will be encouraged to participate in transition services and programs to improve future employment opportunities.

OVR will inform and collaborate with LEAs on development and implementation of community events, such as job fairs, transition fairs, and career days, to introduce students with disabilities to possible career goals.

OVR and BSE will collaborate on the provision of ongoing joint staff training, such as development and implementation of IEPs, pre-employment transition services, accommodations under Section 504, and limitations on youth entering employment paying subminimum wage.

OVR, in collaboration with LEAs, will provide or arrange for the provision of pre-employment transition services to all students with disabilities identified as requiring these services. (The coordination and provision of pre-employment transition services is outlined in more detail below.)

a. Coordination and Provision of Pre-employment Transition Services:

OVR will collaborate with BSE to provide any or all of the five pre-employment transition services required by the Rehabilitation Act, as amended by WIOA, to students with disabilities 14-21 years of age who are in a secondary, postsecondary, or other recognized educational program. Pre-employment transition services are provided based on individual need once a student requests them or is recommended for one or more pre-employment transition services. Any pre-employment service OVR provides will be to students identified by the school of record or to an individual known as a person with a disability to the OVR staff.

OVR, in collaboration with BSE and LEAs, will examine/explore opportunities to provide or arrange for the provision of pre-employment transition services after analyzing the extent to which transition services are being provided to all students with disabilities identified as requiring these services. The five required pre-employment transition services are:

- instruction in self-advocacy to help students with disabilities build skills to solve problems and communicate their own needs and interests;
- job exploration to help students with disabilities learn about jobs and pick a career;
- workplace readiness training to teach students with disabilities how to get and keep a job;
- work-based learning which uses community workplaces to provide students with disabilities the knowledge and skills that will help them connect school experiences to real-life work activities and future career opportunities; and
- counseling on opportunities for enrollment in comprehensive transition or post-secondary educational programs at institutions of higher education to help students with disabilities decide if college or training after high school is right for them.

Under federal law, state VR programs that do not have sufficient funding or personnel to provide services to everyone who is eligible must set priorities to serve those with the most significant disabilities. OVR has been operating under this prioritization, called an order of selection (“OOS”), since March 1, 1994. When OVR temporarily closes the OOS and creates a waiting list for new OVR customers in all priority categories, services will continue for current

OVR customers with an IPE, as well as pre-employment transition services for students with disabilities, as required by federal law. Students with disabilities are subject to the OOS as VR customers; however, they can receive pre-employment transition services in certain instances:

- as a potentially eligible student who has already participated in one of the five required pre-employment transition services (sponsored by OVR) before receiving a determination of eligibility for VR services and being placed on the OOS wait list may receive pre-employment transition services that are new or continuing; or
- a student who has an IPE may receive pre-employment transition services that are new or continuing.

b. Process and Implementation of Pre-employment Transition Services:

LEAs can refer students for pre-employment transition services that are available through direct provision of services through OVR staff or OVR-purchased pre-employment transition services provided through approved providers/vendors.

- Students who are interested in pre-employment transition services will complete the required documentation, which must include parent consent for students under 18 years of age. LEAs will assist in the referral process by verifying that the student meets the definition of a student with a disability and by ensuring supporting documentation is available.
- BSE and OVR will have provided training to staff on the responsibilities of each agency in relation to transition services that might be both a special education service under IDEA and an OVR pre-employment transition service. Staff understand that pre-employment transition services funding can only be used for pre-employment transition services that supplement the services required under IDEA and do not supplant them.
- OVR offers a continuum model of pre-employment transition services that helps students build necessary employment and independence skills through a succession of services. Students move through the continuum building necessary employment skills while also preparing to complete an application for individualized VR services, if desired.
- Not all eligible or potentially eligible students with disabilities will require all five required activities; however, all students with disabilities should receive all *needed* services, as

determined through informed choice and consultation with each student based on their strengths and needs, and consistent with their IEP, when applicable. OVR will disseminate information and provide in-depth pre-employment transition services training through informational presentations, training materials, conference panels, webinars, and face-to-face meetings.

OVR will make its transition publications, information, and referral forms available to the BSE for distribution to students with disabilities, parents or guardians and their representatives at all IEP meetings as part of the routine information shared.

OVR will determine the eligibility of all students with disabilities who have applied for VR services within 60 days from the date that the application is completed and signed by the student, VR counselor, and parent/guardian as applicable, pursuant to section 102(a)(6) of the Rehabilitation Act and section 34 C.F.R. § 361.41(b)(1) of its implementing regulations, unless an extension has been granted.

Transition services are defined similarly in the Rehabilitation Act and the IDEA. According to 34 C.F.R. § 361.5(c)(55), “Transition services” means a coordinated set of activities for a student or youth with a disability:

- designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;
- based upon the individual student’s or youth’s needs, taking into account the student’s or youth’s preferences and interests;
- that includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;
- that promotes or facilitates the achievement of the employment outcome identified in the student’s or youth’s individualized plan for employment; and
- that includes outreach to and engagement of the families, or, as appropriate, the representative of such a student or youth with a disability.

OVR will work collaboratively with LEAs to provide transition services for students with disabilities to facilitate the development and implementation of IEPs in accordance with section 1414(d) of the IDEA.

In accordance with the Rehabilitation Act, an IPE will be developed by VR, prior to an eligible student with a disability exiting high school and within 90 days from the date of VR's eligibility determination, unless an extension has been granted or OVR is operating on a closed OOS. The IPE will be developed by OVR in consideration of the student's IEP or 504 services, as applicable, and in accordance with the plans, policies, procedures, and terms of this MOU. The development and approval of an IPE should be as early as possible during the transition planning process and not later than the time a student with a disability determined to be eligible for VR services leaves the school setting.

Beginning at age 14, agencies that may be able to assist a student with transition needs after exiting school are invited to attend the student's IEP meeting. At times, the OVR staff may not be able to attend IEP meetings when invited. When this occurs, alternative methods of networking with the referral source and the student may be employed. This will ensure that students with disabilities are provided with information about Pre-Employment Transition Services and are given an opportunity to apply at least two years before the student exits school, or when it is determined the student needs more intensive, individualized VR services. Alternatives to physical attendance include: telephone contact; conference calls or videoconferencing; e-mails; or written input for school use in documenting agency participation.

BSE will direct LEAs to:

- collaborate with OVR staff to schedule meetings and notify OVR staff about IEPs within a reasonable amount of time;
- collaborate with OVR staff to obtain appropriate parental consent to document the OVR meeting;
- prioritize invitations for students who are: closest to graduation; requesting services; considering subminimum wage; and/or interested in discovery/customized employment;
- provide information to parents when OVR cannot attend the IEP, and
- follow-up as necessary for effective IEP implementation, typically through

designated staff who are responsible for communicating the student's transition services needs to agency representatives who were unable to attend.

OVR will:

- collaborate with LEA staff to schedule meetings and notify LEA staff of their intent to attend within 3 working days of the notification;
- prioritize invitations for students who are: closest to graduation; requesting services; considering subminimum wage; and/or interested in discovery/customized employment and make their best effort to attend as many IEP meetings as possible; and
- provide OVR informational packets and schedule follow up meetings with students and parents when appropriate.

3. Procedures for Outreach.

OVR and BSE will support outreach activities that will ensure referrals to OVR to provide eligible and potentially eligible students with disabilities a smooth school-to-work transition.

Outreach activities of VR counselors are primarily focused on providing information about VR to school staff, students, families, community professionals, and others interested in pre-employment transition services and transition services, including students and families of diverse backgrounds. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the following:

- VR program purpose;
- eligibility requirements;
- application procedures;
- scope of services that may be provided to eligible students; and
- pre-employment transition services that may be provided to potentially eligible or eligible students.

OVR will provide information to BSE and LEAs regarding OVR services that will be disseminated to students and their families. BSE will ensure that LEAs highlight the information and outreach activities provided by OVR and make such information and activities available to all

students with disabilities and families of students with disabilities OVR staff may conduct outreach in the following manner such as:

- providing VR brochures and business cards to the school;
- presenting at the first open house, family information nights, or orientation held at the school;
- conducting regularly scheduled school visits;
- participating in transition and job fairs at the school;
- attending IEP meetings, when invited; and
- speaking about pre-employment transition services and VR services at school staff meetings, teacher in-service training, student/family group meetings, or interagency meetings.

OVR will work with LEAs to ensure referrals of students with disabilities to the VR program at the beginning of the school year. Referral for pre-employment transition services should begin at age 14 for all students with disabilities who may need them. Although OVR does not impose an age limit on when a student can apply for VR transition services, they encourage students to do so at least two years prior to graduation or school exit. Beginning services at least two years prior to graduation or school exit should allow enough time for determining eligibility, identifying OVR service needs, referring students to community services, and developing the approved IPE prior to the student's exit from school.

4. Roles and Responsibilities.

a. OVR Responsibilities:

- Provide students with pre-employment transition services and transition services under Title IV of the Rehabilitation Act.
- Conduct outreach for students with disabilities who may benefit from VR services as early as appropriate during the transition planning process. OVR will work to foster the referral of students with disabilities to VR services at least two years prior to exiting high school.

- Coordinate a referral process for students with disabilities in need of pre-employment transition services, and students or youth with disabilities interested in applying for VR services. A student with a disability is an individual: with a disability in a secondary, postsecondary, or other recognized education program between the ages of 14 and 21; who is eligible for, and receiving, special education or related services under Part B of the IDEA; or is an individual with a disability, for purposes of section 504.
- Determine eligibility for individual VR services and develop an IPE in coordination with the student's or youth's IEP or 504 plan as early as possible, if a student is interested and applies for VR services prior to graduation.
- Attend IEP meetings in person or by alternative means, such as videoconferences and conference calls, when invited by LEAs.
- Designate staff to be responsible for the oversight of the provision of technical assistance and consultation, and the development of program strategies and procedures applicable for students with disabilities.
- Provide technical assistance to BSE and LEAs through formal and informal training, joint problem-solving, and exchange of information on policies and procedures.
- Identify a single point of contact for each LEA and other schools (including approved private schools and other specialty schools) who will coordinate transition activities, develop collaborative approaches for student outreach and referral for VR services, facilitate communication with OVR staff, and assist with transition planning that facilitates the completion of a student's IEP and the student's transition from school to post-school employment.
- Provide information to BSE on referrals and employment outcomes of students with disabilities by LEA on an annual basis, and additional information as requested and as applicable law allows.
- Share information regarding policies, procedures, guidelines, programs and services to improve access to, and availability of, pre-employment transition services and transition services.

- Provide brochures and materials about the OVR process and services to LEAs for distribution to the students, families, legal guardians, teachers and others.
- Conduct outreach to businesses and promote employer participation in work-based learning experiences, such as worksite tours, employer mock interviews, job shadowing, and paid work experiences for students with disabilities.
- Advise OVR staff to attend IEP meetings when invited and, with parental consent, to provide employment information, technical assistance, case consultation, and information on VR programs and referrals, when needed.
- Perform outreach activities that help inform LEAs, students with disabilities, and their families about the VR program, including purpose of program, VR eligibility requirements, referral and application procedures, and the scope of services that may be provided to eligible individuals.
- Provide supported employment services to a student in their final 6 months of high school or earlier as appropriate to secure permanent competitive, integrated employment if it is an identified service in their IPE.

b. BSE Responsibilities:

- Ensure the provision of FAPE, including transition services under IDEA. 20 U.S.C. § 1401(34) and 34 C.F.R. § 300.43.

(a) Transition services means a coordinated set of activities for a child with a disability that:

(1) is designed to be within a results-oriented process, that is 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, including postsecondary education, vocational education, integrated employment (including Supported Employment), continuing and adult education, adult services, independent living, or community participation; and

(2) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) instruction;

- (ii) related services;
- (iii) community experiences;
- (iv) the development of employment and other post-school adult living objectives; and
- (v) if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

- Ensure that LEAs' coordinated set of activities support career and post-secondary education and training options.
- Ensure that LEAs collaborate with OVR in the provision of transition services and pre-employment transition services.
- Ensure that LEAs collaborate with OVR in determining the student's needed pre-employment transition activities based upon the student's current assessment and secondary transition post-secondary goals.
- Ensure that LEAs provide opportunities for students to develop employment skills and participate in community experiences.
- Ensure that LEAs provide available student information to assist in VR eligibility determination and receipt of pre-employment transition services.
- Ensure that LEAs assist OVR staff with access to students and their school environment and with identifying opportunities to work with students.
- Ensure that LEAs invite OVR staff to the student's IEP meeting.
- Ensure that LEAs collaborate with OVR to determine who will be responsible for providing services that are both special education services and VR services.
- Ensure LEAs are not contracting with an entity for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.
- For students with disabilities who are seeking subminimum wage employment after high school exit, ensure LEAs provide OVR documentation of completion of appropriate transition services under IDEA.

- Ensure that LEAs implement special education requirements for transition planning services specified in IDEA as evidenced by the development and implementation of IEPs for students with identified needs.
- Designate BSE personnel to be responsible for the provision of technical assistance and consultation, and the development of statewide program strategies and procedures applicable to students with disabilities transitioning from school to post-school activities.
- Coordinate a network of professionals focused on assisting schools with implementing effective transition planning and services.
- Provide technical assistance and consultation to OVR through formal and informal training, joint problem-solving, and exchange of information on policies and procedures.
- In accordance with applicable law, share data related to students with disabilities regarding transition services, post-secondary goals, post high school outcomes, and exiting environment data.
- Provide representation on the VR State Rehabilitation Council and relevant committee participation.

c. Mutual Responsibilities:

- Training and Technical Assistance: OVR and BSE will provide consultation and technical assistance to LEAs that will assist in the planning and transition of all students with disabilities who are eligible or potentially eligible from school to post-school activities, including employment. OVR will develop and provide common training and professional development opportunities to improve transition and employment results for youth.
- Planning and Coordination: OVR and BSE will collaborate with PA Statewide Family and Youth representatives in the development of a work group (Pre-Employment Transition Activities Task Force) that targets the improvement of transition to employment outcomes in integrated, community settings for students with disabilities. This task force will also explore and identify pre-employment transition services and transition-related services (work-based learning, internships,

apprenticeships, dual enrollment programs, industry recognized credential programs, and college programs). Further, OVR and BSE will work collaboratively to coordinate with and engage employers on pre-employment transition services for students with disabilities and transition services for youth with disabilities with the goal of preparing students for and securing competitive integrated employment.

- OVR and BSE will continue to collaborate and lead in the PA Secondary Transition Community of Practice and related State Leadership Team.
- Data Sharing: OVR and BSE will share data, within the bounds of applicable law, of potentially eligible and eligible students with disabilities regarding transition services and outcomes.
- OVR and BSE will post this MOU on their respective websites and provide training and technical assistance to VR and Education staff at the state and local level that is recorded and archived on their respective websites.
- OVR and BSE will provide relevant training and technical assistance to minimize redundant services and maximize resources in both systems.
- OVR and BSE will provide a copy of this MOU to the following key stakeholders:
 - all LEA superintendents or chief school administrators;
 - all directors of special education;
 - all OVR District Administrators;
 - the DLI Office of Developmental Programs;
 - Pennsylvania Rehabilitation Council (PaRC);
 - State Board of Vocational Rehabilitation;
 - Right to Education State Task force and Local task forces;
 - Client Assistance Program (CAP); and
 - other entities as identified and/or requested.
- OVR and BSE will develop and distribute notices, memorandums, and other information regarding transition to key stakeholders.
- Transition Services/Accommodations: OVR and BSE will identify and disseminate information about pre-employment transition services and transition services, accommodations, employment services, effective

practices/strategies that create positive employment outcomes to program staff, partners, families, individuals, employers, and public and private stakeholders.

- Assistive Technology (AT): BSE will work with OVR on identifying the AT needs of students eligible for OVR services.
- OVR and BSE will encourage students with disabilities to gain targeted skills necessary to compete in the workforce through specialized technical education programs, trade schools, pre-apprenticeships/apprenticeships, industry-based skills trainings, and internships.
- OVR and BSE will investigate and/or identify, if possible, additional funding sources for high school students with disabilities, such as statewide WIOA Title I programs for supplemental assistance through individual training accounts.

5. Limitations on Subminimum Wage and Documentation Requirements under Section 511.

It is the policy of the Commonwealth that competitive integrated employment is the preferred outcome for all individuals with disabilities regardless of the severity of the disability, including those individuals with complex, medical and behavioral support needs.

Documentation requirements under Section 511 of the Rehabilitation Act for students with disabilities seeking subminimum wage employment: Under Section 511 of Rehabilitation Act, 14(c) businesses referred to as “employers” are prohibited from employing any individual with disabilities who is 24 years of age or younger at subminimum wage, unless the individual has received documentation from OVR upon completion of all the following activities:

- a. Pre-employment transition services or transition services under the IDEA; and
- b. Apply for VR services and the individual was determined:
 - i. Ineligible for VR services.
 - ii. Eligible for VR services, had an approved IPE, and the individual was unable to achieve an employment outcome in CIE after a reasonable period of time, and his/her case was closed.
 - iii. Regardless of the eligibility determination made, the youth with a disability has received career counseling, and information and referral services to federal and state programs to help the individual explore, discover, experience, and attain

competitive, integrated employment and the counseling and information was not for employment at subminimum wage.

BSE will direct LEAs to disseminate these requirements to families, guardians, teachers, and students. OVR will maintain the documentation and provide a copy to the youth within the timelines identified as specified under 34 C.F.R. Part 397. Any of the services identified above that LEAs provide must be documented by the LEA and provided to the student and OVR.

OVR, in consultation with the BSE, will develop a new process or use an existing process to document the completion of the actions described in sections 397.20 and 397.30 by a youth with a disability, as well as a process for the transmittal of that documentation from LEAs to OVR, consistent with the confidentiality requirements of the Family Education Rights and Privacy Act (20 U.S.C. § 1232g(b) and 34 C.F.R. §§ 99.30 and 99.31) and IDEA (20 U.S.C. § 1417(c) and 34 C.F.R. § 300.610), pursuant to section 511(d) of the Rehabilitation Act and 34 C.F.R. § 397.10. This documentation must contain, at a minimum (34 C.F.R. § 397.10(a)(1)):

- youth's name;
- determination made, including a summary of the reason for the determination or a description of the activity or service completed;
- name of the individual making the determination or the provider of the service or activity;
- date determination was made or the required service or activity completed;
- applicable signatures and dates by OVR or education personnel making determination or documenting completion of the required services or activity;
- signature of the OVR personnel transmitting documentation to the youth with a disability; and
- date and method by which the document was transmitted to the youth.

If a youth with a disability or, as applicable, the youth's parent or guardian, declines, through informed choice, to participate in the activities required by Section 511 or the implementing regulations at 34 C.F.R. Part 397, documentation must, at a minimum:

- contain the information in section 397.10(a)(2); and

- be provided by the OVR to the youth within 10 calendar days of the youth's refusal to participate.

OVR and LEAs will retain copies of the documentation in a manner consistent with the requirements of 2 C.F.R. § 200.333.

BSE will instruct LEAs to not enter an arrangement with an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act for the purpose of operating a program under which a youth with a disability is engaged in work at a subminimum wage.

OVR and BSE are committed to supporting the Employment First Act.

6. Financial Responsibility for Services.

OVR and BSE will identify a method for defining the financial responsibility of OVR and LEAs for the provision of VR services and will identify procedures under which OVR may initiate proceedings to secure reimbursement for VR services from LEAs and vice versa. 34 C.F.R. §§ 300.154 & 361.53(d)(3)(i) and (iii).

Disagreements about which entity is financially responsible for payment for services may occur. Decisions about whether the service is related to an employment outcome or educational attainment, or whether the service is considered a special education or related service, as well as whether the service is one customarily provided under IDEA or the Rehabilitation Act, are ones that are made at the State level by BSE and OVR.

The mere fact that some of the transition services typically provided under IDEA are now authorized under the Rehabilitation Act as pre-employment transition services does not mean an LEA should cease providing them and refer those students to the VR program.

If any of the five required pre-employment transition services are needed by a student with a disability, and are not customary services provided by LEAs, OVR will collaborate and coordinate with the LEA regarding the provision of such services.

When similar or identical service needs are identified as education-related in the IEP established by the LEA and employment-related in the IPE established by OVR, it is understood

that disputes will be resolved between OVR and LEAs at the local level. The process for dispute resolution is as follows:

- If the service is special education or a related service and included in the student's IEP, the LEA may provide the service either directly or through other sources, or request OVR provide the service. If OVR determines the service does not violate the comparable benefits policy (unless such a determination would interrupt or delay the progress of the individual) and is identified as a service on the individual's IPE, OVR may assume the costs for the service. If OVR determines that the purpose of the service is more for educational attainment than achievement of competitive, integrated employment, then the LEA would pay for the service, as they would for services under IDEA.
- OVR's funding for assessment for eligibility and vocational needs, counseling and referral services, job placement services, rehabilitation technology and auxiliary aids and services are exempt from comparable benefit and the financial needs test.
- When AT goods or services are needed for educational purposes, it will be the financial responsibility of the LEA. However, prior to exit from high school, OVR will determine needs and comparable benefits for AT for post-secondary education and employment purposes for the individual as needed for employment and identified on the individual's IPE.

Nothing in this MOU shall be construed to reduce the obligation under IDEA for LEAs to provide/pay for transition services that are required to ensure FAPE.

7. General Provisions.

- a. No Contractual Rights. This MOU is not intended to, and does not create, any contractual rights or obligations with respect to the signatory agencies, or other parties.
- b. Disputes. Any dispute arising hereunder shall be submitted to the Office of General Counsel for final resolution.
- c. Choice of Law. The laws of the Commonwealth of Pennsylvania shall be used to interpret this MOU.

- d. Amendments and Modifications. This MOU shall only be modified in writing with the same formality as the original MOU.
- e. Points of Contact.
 - (i) The contact person for this MOU for OVR shall be: Kimberly Robinson, Vocational Rehabilitation Specialist Supervisor, Department of Labor & Industry, Office of Vocational Rehabilitation, 531 Penn Avenue, Pittsburgh, PA 15222, Telephone Number: (412) 209-4524, Fax Number: (412) 565-7587, Email: kirobinson@pa.gov.
 - (ii) The contact person for this MOU for PDE shall be: Carole L. Clancy, Director, PA Department of Education, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126, Telephone Number: (717) 783-6880, Fax Number: (717) 783-6139, Email: caclancy@pa.gov.
 - (iii) Either party may change its designated contact person by providing written notice to the other party.
- f. Effective Date. This MOU will become effective on the date of the last signature and shall be in effect for a period of five (5) years.
- g. Entire Understanding. This MOU represents the entire understanding between the parties. No other prior or contemporaneous oral or written understandings exist with regards to this relationship.
- h. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original and shall have the full force and effect as an original but all of which shall constitute one and the same instrument. This MOU will be considered duly executed and delivered by any party affixing its electronic signature to an electronic file of the contract or when the signature of a party is delivered by facsimile transmission or delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail (email).
- i. No Third-Party Beneficiaries. Nothing in this MOU, express or implied, is intended to or shall confer upon any person or legal entity any legal or equitable right, benefit or remedy of any nature under or by reason of this MOU.

[SIGNATURE PAGE FOLLOWS.]

The parties, through their authorized representatives, have signed this MOU below.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF VOCATIONAL REHABILITATION



10/8/20

Secretary/designee Date

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION



9/24/20

Secretary/designee Date

APPROVED AS TO FORM AND LEGALITY:



10/15/20

Office of Chief Counsel Date
Pennsylvania Department of Labor and Industry



9/28/2020

Office of Chief Counsel Date
Pennsylvania Department of Education

Deputy General Counsel Date
Office of General Counsel

Comptroller Operation Date