

Addressing the Policy Tangle: Students with Intellectual Disability and the Path to Postsecondary Education, Employment and Community Living

Inclusive Higher Education Committee

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Inclusive Higher Education Committee

The Inclusive Higher Education Committee (formerly Experts Workgroup) has been working since 2006 to provide technical assistance to Congress, the Administration, and the field regarding postsecondary education and students with intellectual disability, and to promote improved opportunities and funding. The Committee worked closely with Congress in the development of provisions in the Higher Education Opportunity Act of 2008 related to students with intellectual disability (ID) and has developed recommendations for retaining and improving those provisions in the reauthorization of the Higher Education Act. The Committee is comprised of disability and education policy experts with diverse experiences and backgrounds. Recommendations of the committee reflect the individual viewpoints of these experts, and not necessarily the organizations and institutions with which members are affiliated. A list of Committee members may be found in Appendix A.

To read the committee's recommendations on the Higher Education Act reauthorization, see: <https://www.ndsccenter.org/wp-content/uploads/Senate-HELP-Com-ID-letter-3.22.2018.pdf>

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EXECUTIVE SUMMARY

This report examines issues regarding needed alignment of services and collaboration among agencies and institutions of higher education (IHEs) to achieve the goal of supporting youth with intellectual disability (ID) to obtain increased academic learning, independent living, and competitive integrated employment through participation in postsecondary education. The report identifies and recommends addressing barriers to student participation in higher education programs for students with intellectual disability that are the result of a lack of alignment in the implementation of the Higher Education Opportunity Act of 2008 (HEOA), the Individuals with Disabilities Education Act (IDEA), and the Workforce Innovation Opportunity Act (WIOA). These statutes were expressly designed by Congress to improve education, postsecondary education, transition and employment outcomes for students with disabilities.

Despite language in the preamble of the IDEA 2004 regulations clarifying that IDEA funds may be used to support such students, and language in the WIOA regulatory preamble clarifying that vocational rehabilitation (VR) funds may be used to support students in these programs, subsequent guidance or interpretations of guidance are leading to the denial of special education and VR services for many students in postsecondary education programs. Denying these students the funding and supports intended by Congress is doing real harm to their opportunities to receive an education, become employed, and become as independent as possible.

These are implementation issues that need to be addressed through guidance. Regulatory and statutory changes are not needed. In fact, the Inclusive Higher Education Committee (IHEC) opposes recent efforts to open up the WIOA regulations for reconsideration.

IHEC recommends that the U.S. Department of Education (the Department) issue new guidance clarifying that IDEA and VR funds may be used to support students with intellectual disability in postsecondary education. This report addresses this need in three parts below.

PART 1: STUDENTS WITH DISABILITY, POSTSECONDARY EDUCATION, AND THE NEED TO ALIGN POLICY

For decades, unemployment statistics for individuals with disabilities, particularly those with ID, have remained unacceptably and distressingly high. One important national survey found that of over 23,000 adults with disability residing in 31 states only 14.8% of them were in competitive employment.¹ Equally telling data from 2011 found that the employment rate for transition-age individuals (ages 16–21) was only 18%.² This is so even in 2018, a year in which the national unemployment rate has fallen to 3.8%³, a percentage that many believe meets the threshold of full employment. But sadly, for so many individuals with intellectual disability, unemployment, especially long-term unemployment, contributes to significant poverty and social isolation that often extends across the lifespan. In order to move forward from the current system that all too often results in a pipeline to segregated sheltered work, where individuals earn less than minimum wage, or day programs, to a future that achieves the vision of employment and independence for students with intellectual disability, these issues must be addressed and the web of conflicting policy implementation must be untangled.

Progress towards this vision is detailed in the *Report on Model Accreditation Standards for Higher Education Programs for Students with Intellectual Disability: A Path to Education, Employment, and Community Living*. This report describes how the United States is at a pivotal point in aligning disability laws and developing improved policies, best practices, and programs that will lead to significantly better life outcomes for people with ID. There is considerable support for innovation that will produce these improved outcomes, including improvements to the Higher Education Opportunity Act of 2008 (HEOA), which reauthorized the Higher Education Act (HEA); the Workforce Innovation and Opportunity Act (WIOA), which is the 2014 reauthorization of the Workforce Investment Act of 1988 and the Rehabilitation Act of 1973, and the passage of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act).

Innovation in the HEOA created access to postsecondary education for students with intellectual disability for the first time, as well as access to financial aid. These new options for students with ID were unprecedented. The next section outlines the HEOA improvements in greater detail.

In an equally remarkable way WIOA re-framed expectations for individuals with ID – it required the targeting of funds on youth with disability for the purpose of providing

¹ Hiersteiner, D., Butterworth, J., Bershadsky, J., and Bonardi, A. (2016). *Working in the community: The status and outcomes of people with intellectual and developmental disabilities in integrated employment—Update 2. NCI Data Brief, April. 2016*. Cambridge, MA: Human Services Research Institute.

² Butterworth, J., Smith, F. A., Hall, A. C., Migliore, A., Winsor, J., & Domin, D. (2013). *StateData: The national report on employment services and outcomes, 2013*.

³ U.S. Department of Labor, Bureau of Labor Statistics. (2018). *News release: The employment situation – May 2018*. Washington, D.C.

supports and services to achieve competitive integrated employment while simultaneously limiting the possibility of their placement in sheltered workshops. WIOA also clarified that a variety of services, including vocational training and supports could be provided to students with ID in designated postsecondary education programs (Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities (CTP)) as defined by the HEA. Further, in an effort to reinforce alignment between education systems and agencies charged with providing employment training and job placements, WIOA amended the Individuals with Disabilities Education Act (IDEA). IDEA guarantees a free appropriate public education to children with disabilities, to prohibit school districts from contracting with entities that place students in special education in sheltered workshops as part of their transition activities.

In a similar manner, the ABLE Act was groundbreaking in that for the first time it created a tax advantaged savings account for individuals with disabilities and their families to save funds for a variety of disability-related expenses including education, employment training, and housing that occur across the lifespan of an individual with disability. Modernizing these laws and aligning them with other federal laws that impact persons with disabilities, such as IDEA, will lead to a more seamless disability system of services and supports for these individuals as they move towards employment and independent living.

Families and Individuals with Disabilities Increasingly Seek Better Post-School Options

A growing movement to offer postsecondary education opportunities for students with ID is providing new hope to students with ID and their families to obtain a college experience, access greater employment opportunities, and become better prepared to live more independently in the community. There are now 270 postsecondary programs across the country.⁴ As mentioned, at the urging of families, students, disability organizations, and IHEs, Congress included new provisions in the HEOA related to students with ID. Students who meet the definition of a “student with an intellectual disability” enrolled in CTPs approved by the U.S. Department of Education may now access certain forms of federal financial aid (Pell and Supplemental Educational Opportunity Grants and Work-Study jobs).⁵

Also, HEOA authorized Transition and Postsecondary Programs for Students with Intellectual Disability (TPSIDs) to create or expand high-quality model programs and a National Coordinating Center (NCC) to provide technical assistance, evaluate the TPSIDS, and recommend model accreditation program standards. In addition to meeting the requirements of a CTP program, TPSIDs have additional grant requirements such as developing meaningful credentials and reporting data on programs and students, including outcome data.

⁴ <https://thinkcollege.net/college-search>

⁵ Higher Education Opportunity Act of 2008, Pub. L. No. 100-315, Stat. 3289 (2008).

In just eight years, the TPSID initiative has supported the creation or expansion of programs at 93 colleges and universities serving 3,350 students with intellectual disability across 31 states. These programs have enabled students to take inclusive college classes, obtain career experiences through internships, and in many cases, have received additional supports to access competitive, integrated paid employment.

The NCC evaluation of the TPSID projects indicates substantial gains in employment outcomes and trends over the FY 2011 through 2017 TPSID years and these employment findings mark a significant departure from typically low employment outcomes for students with ID. As indicated above, in 2011, the employment rate for transition-age individuals (ages 16–21) was 18%, which was less than half the employment rate for people without disabilities.² This gap became worse as people with ID aged, with only 32% of adults ages 20–30 having employment, compared to 74% of their peers without disabilities in the same age group.⁶

The TPSID evaluation employment data points, illustrate very impressive outcomes:

- The percentage of students with a paid job while participating in the TPSID from 2010-2016 began at 27% (2010-11)⁷ and increased to 50% (2016-17)⁸. The percentage of employment while in college is now higher than the percentage of full-time undergraduate students without disabilities.⁹
- Data from 2016-17 indicate that 50% of students had a paid job, and 52% of these students had NEVER held a paid job prior to enrolling in a TPSID program.⁹
- Nearly two thirds of individuals who completed a TPSID program in 2015-16 (61%) had a paid job 1 year after exit from the program. In comparison, 17% of adults with intellectual/developmental disability (I/DD) in the general population had a paid job in the community in 2014–

⁶ Sulewski, J. S., Zalewska, A., Butterworth, J., & Migliore, A. (2013). *Trends in employment outcomes of young adults with intellectual and developmental disabilities in eight states, 2004-2011*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

⁷ Grigal, M., Hart, D., Smith, F. A., Domin, D., & Sulewski, J. (2013). *Think College National Coordinating Center: Annual report on the transition and postsecondary programs for students with intellectual disabilities*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

⁸ Grigal, M., Hart, D., Smith, F. A., Domin, D., & Weir, C. (2017). *Think College National Coordinating Center: Annual report on the transition and postsecondary programs for students with intellectual disabilities (2014–2015)*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

⁹ Smith, F., Grigal, M., & Papay, C. (2018). *Year one employment and career development experiences of college students attending Cohort 2-TPSID model demonstration programs*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

2015, the most recent year for which data are available.¹⁰

This data shows that TPSIDs are having a strong positive impact on the employment of youth and adults with ID.

Unfortunately, as discussed in the next two sections, many students with ID are being denied the services to help them participate in these programs. Further guidance from the US Department of Education is needed to clarify and align state and federal policy implementation so that these services and outcomes are available to all students with intellectual disability, as intended by federal law.

PART 2: CONGRESS INTENDED ALIGNMENT OF IDEA AND HEOA

Congress Directs School Districts and Programs to Collaborate, Including the Use of IDEA Funds for Students with ID in Postsecondary Settings

Inclusive Postsecondary Education (IPSE) for students with intellectual disability offers new opportunities for students to receive their postsecondary education, services, preparation for independent living, and career development in an inclusive (least restrictive) setting. Collaboration between IHEs and school districts for these transition students (typically 18 to 21 years and still eligible for IDEA services) is critically important. Of the 269 college and university programs that enroll students with ID nationally, 103 or 38% are serving transition aged youth with ID that are dually enrolled in high school and college.

With respect to the TPSID model programs, funded in 2010 and again in 2015, it is noteworthy a grant receiving program, as mandated by HEA, “partners with one or more local educational agencies to support students with intellectual disabilities participating in the model program who are still eligible for special education and related services under the Individuals with Disabilities Education Act”¹¹ including using IDEA funds to do so. These partnerships are manifested in a variety of activities. In 2014-15, LEAs, in partnership with TPSIDs, conducted outreach and recruitment (61% of TPSID programs), provided direct services to students (58%), participated in person-centered planning (58%), and participated in project advisory committees (39%).⁸

IDEA 2004 Regulations Preamble Clarifies that IDEA Funds May Be Used for Students with ID in Postsecondary Settings

Federal regulations include a “preamble” section that contains, among other information, a discussion of the background and major issues involved and responses to substantive public comments received by the agency.¹² The preamble to the IDEA 2004 regulations

¹⁰ Papay, C., Trivedi, K., Smith, F., and Grigal, M. (2017). *One year after exit: A first look at outcomes of students who completed TPSIDs. Think College Fast Facts, Issue No. 17*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

¹¹ Higher Education Act of 1965, P.L. 89-329 Sec. 767(d)(6) (1965).

¹² Preamble Requirements, 1 CFR 18.12 (2012).

clearly states that IDEA Part B funds may be used to support transition-age students with ID in postsecondary settings.

As shown below, the preamble language clarifies that:

- It is an IEP Team decision whether a child should participate in a transitional program on a college campus or in a community based setting to meet his or her goals.
- If a child's IEP Team determines that a child's needs can best be met in transitional programs on college campuses or in community-based settings, and includes such services on the child's IEP, then IDEA Part B funds may be used for this purpose.
- If dual enrollment programs are available to students without disabilities, then students with disabilities must have the same options.
- Public agencies are not required to set up dual enrollment programs for students with disabilities if they are not provided to nondisabled secondary school students.

Approximately 3,000 organizations and individuals commented on the Department's proposed IDEA 2004 regulations citing The President's Committee for People with Intellectual Disabilities (PCPID) 2004 Report, which stated that many students who are 18 to 21 years and still eligible for IDEA services have had to remain in high school or participate in a "center" type program, which usually has consisted of segregated employment and earnings at subminimum wage. The Report called for dual enrollment transitional programs located at two or four-year universities, or participation in vocational and educational training programs in integrated community settings, with funding from various agencies, including using IDEA funds, if deemed appropriate by the IEP team.¹³

The preamble to the final IDEA 2004 regulations included the following description of public comments and discussion about the Department's response to comments regarding these students who have not yet received a regular high school diploma or "aged out" of IDEA services.¹⁴

In a response to commenters who requested clarification that IDEA funds can be used to support students in transitional programs on college campuses and in community-based settings, the US Department of Education stated:

"We do not believe that the clarification requested by the commenters is necessary to add to the regulations because, as with all special education and

¹³ President's Committee for People with Intellectual Disabilities. (2004). *A charge we have to keep: A road map to personal and economic freedom for people with intellectual disabilities in the 21st century*. Washington, D.C.

¹⁴ National Archives and Records Administration. (2006). *Assistance to states for the education of children with disabilities and preschool grants for children with disabilities, 34 CFR parts 300 and 301*. Federal Register, 71(156), 46540-46845.

related services, it is up to each child's IEP Team to determine the special education and related services that are needed to meet each child's unique needs in order for the child to receive FAPE. Therefore, if a child's IEP Team determines that a child's needs can best be met through participation in transitional programs on college campuses or in community-based settings, and includes such services on the child's IEP, funds provided under Part B of the Act may be used for this purpose.” F.R. 71(156), page 46668

In a question posed by commenters specifically concerning children with disabilities who have not yet received a regular high school diploma or “aged out” of special education, the Department said that:

“Section 300.110, consistent with section 612(a)(2) of the Act, requires States to ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency. This would apply to dual enrollment programs in post-secondary or community-based settings. Therefore, a State would be responsible for ensuring that a public agency that offered dual enrollment programs in post-secondary or community-based settings to a nondisabled student would have that option available to a student with disabilities whose IEP Team determined that such a program would best meet the student's needs. However, we do not believe that the Act requires public agencies to provide dual enrollment programs in post-secondary or community-based settings for students with disabilities, if such programs are not available to nondisabled secondary school students. Therefore, we are not modifying the regulations.” FR 71(156) page 46584

OSEP Letter and Guidance Create Confusion

Contrary to the intent expressed in the preamble, a more recent Office of Special Education (OSEP) policy letter and a separate guidance document contradict the regulatory preamble language. In 2013, Mr. Kelly Dude wrote to OSEP on behalf of school districts in the Pike’s Peak region of Colorado inquiring “whether services at postsecondary institutions can be provided as part of a student’s transition services identified in the student’s individualized education program (IEP).”¹⁵

The response to Mr. Dude from OSEP included the following:

“If under State law, attending classes at a postsecondary institution, whether auditing or for credit, is considered secondary school education for students in grade 12 or below and the education provided meets applicable State standards, those services can be designated as transition services on a student’s IEP and paid for with IDEA Part B funds consistent with the student’s entitlement to a free appropriate public education (FAPE).”

¹⁵ See the OSEP policy letter to Mr. Dude under Appendix C.

Additionally, the letter to Mr. Dude states, “If the IEP Team determines that services in a community, technical or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE and those services are considered secondary school education as discussed above, the student’s IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part B funds.”

The reference in the letter to attending classes at an IHE being “considered secondary school education” likely refers to dual enrollment programs, although that term is not specifically used. Subsequent 2017 Department guidance in its section on “Dual or Concurrent Programs” states:¹⁶

“The Office of Special Education Programs has stated in prior policy guidance that, *if under State law* (emphasis added), attending classes at a postsecondary institution, whether auditing or for credit, is considered secondary school education for students in grade 12 or below and the education provided meets applicable State standards, those services can be designated as transition services on a student’s IEP and paid for with IDEA Part B funds, consistent with the student’s entitlement to FAPE.”

This OSEP policy letter and guidance differ markedly from the IDEA preamble language quoted above. Instead of leaving decisions about individual students up to the IEP Team and requiring that students with disabilities be *allowed* to participate in existing dual enrollment programs, the guidance turns the requirement around so that IDEA funds are *prohibited* from being used unless dual or concurrent enrollment programs exist under state law.

This new requirement (in the policy letter and guidance) regarding dual enrollment programs is particularly problematic given the complexity of these programs in the states. Two reports by the Education Commission on the States, the “50-State Comparison Dual/Concurrent Enrollment Policies”¹⁷ and “Dual Enrollment - All State Profiles”¹⁸ describe the diverse systems that exist. The programs, which exist in almost all states, vary widely regarding where classes will be offered, what type of institutions of higher education will be involved, whether dual enrollment programs are voluntary or mandatory for the school district, and other matters.

The spirit and intent of the IDEA 2004 preamble language should determine how IDEA funds are used to support transition students. IDEA funds should not be limited to serving students in dual enrollment programs established through formal Memorandum of Understanding (MOU) agreements required or authorized by state

¹⁶ U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services. (2017). *A transition guide to postsecondary education and employment for students and youth with disabilities*. Washington, D.C.

¹⁷ <https://www.ecs.org/dual-concurrent-enrollment-policies/>

¹⁸ <http://ecs.force.com/mbdata/mbprofallRT?Rep=DE14A>

law. Flexibility should be provided to use IDEA funds in a variety of ways, as intended by Congress. Examples include, but are not limited to:

- A student may be placed in a postsecondary program through the IEP team, with funding and services provided as agreed to by the IEP team. That placement could occur in a variety of ways, such as:
 - In a formal dual enrollment program established by the school district and the IHE.
 - In an IPSE program that accepts students from various school districts as well as adult students, but does not have a formal dual enrollment agreement between the IHE and school districts.
 - A program on a college campus providing classes and work experiences supported by school district personnel.
 - In another type of postsecondary setting that includes academic and/or employment services.
- School districts may agree to pay for tuition and/or for other services to students who are accepted into IPSE programs. In other words, if the IPSE accepts the student, then the school district pays for tuition and/or other services for the accepted student.
- School districts may agree to pay for personnel to perform specific roles in the IPSE, such as teacher, educational aide, job coach, etc.
- Services to parentally-placed students through a Services Plan.¹⁹

It is imperative that new guidance be issued to clarify that IDEA Part B funds may be used to support students still eligible for IDEA in postsecondary and community-based settings.

PART 3 POLICIES LEADING TO MISALIGNMENT OF WIOA AND HEOA IMPLEMENTATION

WIOA emphasized interagency collaboration, including use of Pre-Employment Services and Other Vocational Rehabilitation (VR) funds, for students in IPSE

WIOA, which was designed to strengthen and improve our country's public workforce system and help move Americans, including those with significant barriers to employment, into high-quality jobs and careers and help employers hire and retain skilled workers, has a strong emphasis on requiring collaboration among agencies, serving youth and those with significant disabilities, and competitive integrated employment.²⁰ WIOA also contains specific provisions related to transition that are new for state vocational rehabilitation (VR) systems. These key provisions include requiring that 15% of each state's funding allocation for VR services must be designated for transition services for

¹⁹ <https://www2.ed.gov/about/offices/list/oii/nonpublic/idea1.html>

²⁰ The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. (2015). *Advisory committee on increasing competitive integrated employment for individuals with disabilities: Final report*. Washington, D.C.

students and youth between the ages of 14 and 24.²¹ These Pre-Employment Services (Pre-ETS) are a new category of VR funding that include five types of services that must be made available and additional services that may be provided. One of the five required services is counseling on opportunities for enrollment in comprehensive transition or postsecondary education programs at institutions of higher learning. In fact, Comprehensive Transition programs are the CTPs authorized by HEOA and described above. WIOA also requires interagency collaboration between VR and school districts including information sharing, joint planning, and coordination of services.

HEOA also prioritizes collaboration with Vocational Rehabilitation in the TPSID grant requirements. By the end of the first cohort of grants, 2010-2015, 77% of TPSID programs partnered with their state VR agency.⁸ In the first year of the second cohort, 2015-2016, 25 of the 44 TPSID programs partnered with VR, and of that 25, 76% collaborated with VR to provide pre-employment transition services, and 68% reported that VR provides services to students.²² In the next year, 2016-2017, 32 (70%) of the 46 programs partnered with their state VR agencies.²³ This data shows strong VR participation in TPSID programs that could be further improved through clarifying and more uniformly applying WIOA mandates for VR to collaborate with schools and IPSE programs.

The TPSID programs have demonstrated strong outcomes related to employment preparation and attainment of paid employment. Since 2015, 64% of students were engaged in career development activities and 50% of students had a paid job while in the program.²⁴

The preamble to the WIOA regulations clearly states that students in IPSE programs for students with ID are eligible for vocational and other transition services.

“Some commenters recommended that proposed §361.48(b) include other services not already specifically mentioned. Of these commenters, a few suggested that §361.48(b)(6) allow DSUs [designated state unit] to provide tuition and other services for students with intellectual or developmental disabilities in a Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities, as defined by the Higher Education Act of 2008.”

²¹ Luecking, R., (2016). *The Implications of the Workforce Innovation and Opportunity Act for seamless transition of youth with significant disabilities*. Washington, DC: Collaboration to Promote Self-Determination.

²² Grigal, M., Hart, D., Papay, C., Domin, D. & Smith, F., (2017). *Year one program data summary (2015-2016) from the TPSID Model Demonstration Projects*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

²³ Grigal, M., Hart, D., Papay, C., & Smith, F., (2018). *Year two program data summary (2016-2017) of the TPSID Model Demonstration Projects*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

²⁴ Think College National Coordinating Center (2018). *Raw data from cohort 2 TPSIDs*. Unpublished raw data, Institute for Community Inclusion, UMass Boston.

The Department responded:

“Similarly, we clarify here that the vocational and other training services specified in final §361.48(b)(6) encompass tuition and other services for students with intellectual or developmental disabilities in a Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities, as defined by the Higher Education Act of 2008.”²⁵

Moreover, the HEOA also directs the Department to give preference in awarding TPSID grants to applicants that demonstrate partnerships with agencies “such as Vocational Rehabilitation Agencies”.

Despite Congress’ clear intent to focus on interagency collaboration in WIOA and HEOA, a lack of alignment in the implementation of WIOA, HEOA, and IDEA is causing students with intellectual disability in postsecondary programs in some states to be denied the VR and IDEA funded-services needed to access IPSE as a pathway to achieving competitive integrated employment.

Traditional VR Services are being Denied to Students in IPSE in Some States

Some vocational rehabilitation agencies are discouraging students with ID from attending IPSE by refusing to pay for a variety of services. Where this occurs, the agency **incorrectly interprets that the only students that should attend these programs are those who are working toward a recognized postsecondary credential** as defined in WIOA.²⁶ For instance, Opportunities for Ohioans with Disabilities (OOD), which operates Ohio’s Vocational Rehabilitation program, has created a fact sheet with information on comprehensive transition and postsecondary program (CTPs), including those IPSE programs for students with ID. The Ohio VR Fact Sheet specifically states:

“... OOD may be able to contribute to the cost of college tuition from an institution of higher education if the youth has an employment goal that requires a recognized postsecondary credential, which means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State or Federal Government, or an associate or baccalaureate degree.”²⁷

The Ohio VR agency has taken the language from the WIOA definition of a “recognized postsecondary credential” without also taking into consideration the language from the

²⁵ Federal Register / Vol. 81, No. 161 / Friday, August 19, 2016 / Rules and Regulations (34 CFR 361.48(b)), page 55678

²⁶ See Appendix B for definition of “recognized postsecondary credential”

²⁷ Opportunities for Ohioans with Disabilities. (2016). *Vocational Rehabilitation (VR) program support for students in Comprehensive Transition and Postsecondary Programs (CTPS)*. Ohio. Retrieved from <http://nisonger.osu.edu/wp-content/uploads/2016/10/CTP-OOD-Fact-Sheet-FINAL.pdf>

Preamble to the WIOA regulations, or the statutory language from HEOA that applies to IPSE programs. **HEOA specifically and intentionally omitted the requirement for students with intellectual disabilities to attain traditional degrees or certificates.** Instead, HEOA authorizes a new type of postsecondary credential for these students. The HEOA statutory language below clearly demonstrates this:

“The term ‘comprehensive transition and postsecondary program for students with intellectual disabilities’ means a degree, certificate, or nondegree program that is--

- (A) offered by an institution of higher education;
- (B) designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;
- (C) includes an advising and curriculum structure; and
- (D) requires students with intellectual disabilities to participate on not less than a half-time basis, as determined by the institution, with such participation focusing on academic components.”²⁸

CTPs that were developed in response to this language in the HEOA are now receiving incorrect information from some state VR agencies. Students with intellectual disability who are enrolled in these programs are being told they are not eligible for VR services, let alone Pre-ETS services under WIOA, because they are not seeking a “recognized postsecondary credential” as defined in WIOA. This information is conveyed to these students even though HEOA clearly states something different. The programs and the students are finding themselves in an unnecessary Catch -22— choosing which guidance or interpretation to follow and which services to seek. Thus, in some states, students with ID are being incorrectly discouraged from attending IPSE programs which IDEA, HEOA, and WIOA all support.

Pre-ETS are Being Denied to Students in IPSE in Some States

Correspondingly, some state vocational rehabilitation agencies are denying Pre-ETS under WIOA if the student is not working towards a “recognized postsecondary credential” under WIOA. Based in part upon their interpretation of the RSA Technical Assistance Circular (TAC), these state agencies define “students with disabilities” entitled to Pre-ETS services as only those working toward a “recognized postsecondary credential”.²⁹ Again, students with ID in IPSE programs, including those in CTPs,

²⁸ Higher Education Opportunity Act of 2008, Pub. L. No. 100-315, Stat. 3361 (2008).

²⁹ U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration. (2017, Aug 17). *Technical Assistance Circular RSA-TAC-17-01: Performance accountability guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, Title IV core programs.*

typically do not meet the WIOA definition of a “student with a disability”, since they are not working towards a “recognized postsecondary credential” and instead are working towards a postsecondary credential as authorized in HEOA. Thus, students with ID are not able to access Pre-ETS services in some states. Yet these students are in programs authorized by HEOA and often approved for financial aid by the US Department of Education, Federal Student Aid Office, and are exactly the type of students WIOA was intended to assist.

For instance, the Division Director of the North Carolina Department of Health and Human Services, Division of Vocational Rehabilitation Services released a letter to Postsecondary Education Stakeholders on July 3, 2017 which, in effect, negated the opportunity for students with ID in IPSE programs from being able to access Pre-ETS funding based on this flawed interpretation and verbal comments reportedly made by RSA staff. The letter references remarks made at the April 2017 Spring Conference of the Council of State Administrators of Vocational Rehabilitation (CSAVR) at which:

“... RSA [Rehabilitation Services Administration] provided specific guidance on the classification of individuals enrolled in a variety of postsecondary educational programs in terms of whether these individuals would be considered *students with disabilities*. RSA advised that *postsecondary or other recognized educational programs* are those programs which will result in a *recognized postsecondary credential*. RSA directed VR agencies to a technical assistance circular (RSA-TAC-17-01) containing definitions and policies related to performance accountability for details on what may be considered a recognized postsecondary credential.”³⁰

The North Carolina letter concluded that:

“Based on the direction of RSA, NCDVR will immediately apply the definition above when determining whether an individual enrolled in postsecondary educational programs can be considered a *student with a disability* who may access pre-employment transition services funded out of the 15% reserve.”

The interpretation of the TAC by North Carolina to require that students with ID must be working toward a recognized postsecondary credential to access Pre-ETS services significantly limits the services that students with ID in IPSE program may receive in that state. The TAC, a performance accountability document, should not be applied in this way.

The oral interpretation of the TAC that RSA reportedly gave to state agencies indicates that a postsecondary student does not meet the definition of a “student with a disability” unless the student is in a “recognized educational program” that leads to a “recognized post-secondary credential” as defined in WIOA. As described above, the HEOA defines

³⁰ See the North Carolina Department of Health and Human Services, Division of Vocational Rehabilitation letter to Postsecondary Education Stakeholders under Appendix D.

postsecondary programs for students with intellectual disability in a different way that does not require a “recognized postsecondary credential”, as that term is defined in WIOA. Instead, HEOA requires a credential that is determined by the issuing institution of higher education. This is a prime example of the misalignment and misunderstanding of the statutes and definitions.

This interpretation also contradicts the section of the WIOA regulations preamble which states:

“...WIOA emphasizes the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the services, including training and other supports, they need to achieve employment outcomes in competitive integrated employment. The Act, as amended by WIOA, expands not only the population of students with disabilities who may receive vocational rehabilitation services but also the breadth of services that the VR agencies may provide to youth and students with disabilities who are transitioning from school to postsecondary education and employment. We implement the emphasis on serving students and youth with disabilities contained in the amendments to the Act made by WIOA in many regulatory changes to part 361 by

• Including in §361.5(c)(51) and (c)(58), respectively, new definitions of “student with a disability” and “youth with a disability.” ***After further analysis of the comments received, the Department has determined that the definition of “student with a disability” applies to all students enrolled in educational programs, including postsecondary education programs, so long as they satisfy the age requirements set forth in final §361.5(c)(51) (emphasis ours).*** The definition is also inclusive of secondary students who are homeschooled, as well as students in other non-traditional secondary educational programs. ***We have incorporated this broader interpretation of the definition in final §361.5(c)(51), which we believe will increase the potential for DSUs to maximize the use of funds reserved for the provision of pre-employment transition services by increasing the number of students who may receive these services (emphasis ours).***”³¹

The emphasis in WIOA on competitive integrated employment and postsecondary education and transition services was intended to apply to students with *all* types of disabilities, including those with ID. By limiting some of the services only to students who can earn a recognized postsecondary credential, students with ID are effectively excluded from the new law’s emphasis and targeted funding on transition and youth. While these students should continue to be eligible for other VR services, they are being held to a standard that conflicts with HEOA and the WIOA Preamble language with respect to Pre-ETS services. It is evident that these interpretations are resulting in the

³¹ Federal Register /Vol. 81, No. 161/Friday, August 19, 2016/page 55631

exclusion of individuals who are ostensibly eligible and who would greatly benefit from these services.

Three Distinct Populations Confront Challenges to Receiving VR Services and Funding in Some States

There appear to be at least three distinct populations that are affected adversely by faulty policy interpretations with respect to Pre-ETS and VR funding for IPSE programs for students with ID:

- A) Students who are dually enrolled in secondary (high school) AND postsecondary education and are still receiving IDEA services;
- B) Students who are enrolled in IPSE programs, meet the age requirements, (e.g. age 18-21) for Pre-ETS funding, are not receiving IDEA services, but *are* eligible under Section 504; and
- C) Students with ID enrolled in IPSE programs but who do not meet the definition of “student with a disability” because they do not meet the age requirements for Pre-ETS funding.

A. Dually Enrolled Students with ID in IPSE Programs

We first must consider students dually enrolled in IPSE programs for students with ID, who are also still in high school with an IEP and who should be eligible for Pre-ETS services under WIOA. Within the TPSIDs, the programs currently being tracked by the NCC, in 2016-17, 90% of students attending TPSIDs were ages 18-25 and 23% were dually enrolled **high school students** receiving their transition services under IDEA via a college-based transition program at the college or university hosting the TPSID program³².

Some state vocational rehabilitation agencies are determining that these students are not eligible for Pre-ETS services. However, these dually enrolled students are working toward their secondary (high school) credential as distinct from a postsecondary credential. Thus, this is an interpretation that says that they *must* be working toward a postsecondary credential to be eligible for Pre-ETS services, and is inconsistent with the statute. Such an interpretation would mean that **NO** dually enrolled student could ever receive Pre-ETS services from VR, yet those students are precisely who Pre-ETS services are intended to target in WIOA for competitive, integrated employment.

B. Transition Age Students with ID in IPSE Programs Who Are Not Dually Enrolled

The second group facing a significant policy challenge consists of students enrolled in IPSE programs who are not dually enrolled. They may still be eligible for IDEA services, though they may not currently be receiving IDEA services. These students meet the age

³² Grigal, M., Hart, D., Smith, F. A., & Papay, C. (2018). *Year two student data summary (2016-2017) of the TPSID model demonstration projects*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

requirement and are still eligible to be considered a “student with a disability” eligible for Pre-ETS since the WIOA definition includes “a student who is an individual with a disability, for purposes of section 504” of the Rehabilitation Act. Therefore, these students with ID should qualify for services from VR in a variety of ways, including receipt of Pre-ETS as well as other VR services.

These students with ID enrolled in IPSE programs are engaged in career development and employment activities as part of their approved program of study. In particular, the CTPs are required by HEOA to focus on academics, employment experiences, and independent living. The students are provided with individualized supports and opportunities to be involved in college experiences with their peers without disabilities in an integrated college setting.

Congress recognized that students in these programs would earn valuable credentials that do not fit in the typical mold. Therefore, HEOA required the National Coordinating Center, from its outset, to work with TPSIDs to support the development of “meaningful credentials”. These are the credentials students in CTPs are working towards, not a “recognized post-secondary credential” as defined in WIOA.

C. Adult Students with Intellectual Disability in IPSE are Eligible for VR Services

A third group are students in IPSE programs who do not qualify for Pre-ETS, because they are older than the age eligibility requirement in the definition of “student with a disability”. These students are distinguished from the categories mentioned above only by age. The preamble to the WIOA regulations has clearly recognized that students in IPSE programs for students with ID are eligible for vocational and other transition services. However, some programs are reporting VR agencies are denying these students eligibility for *any* VR services.

Further Confusion and Complications Regarding VR

Inequitable funding for students with ID: There are some circumstances where VR agencies do contribute to the cost of IPSE programs for eligible students, but establish a standard for what services they will pay for within those programs that is different than the standard for other students with disabilities. In particular, some state VR agencies have communicated that they will pay for IPSE, but only those portions that directly apply to work skills development or the identified vocational goal. Not funded are college or university courses taken (usually, but not always, by audit), that are part of the certificate program of study. However, these same VR agencies routinely fund students who do not have ID, but have other disabilities, and fund any and all classes toward a certificate or degree, many of which are not directly related to their vocational goal. **Applying one very limited standard to students with ID and a broad standard to other postsecondary education students with disabilities is an issue in many ways and is inequitable. The same standard of VR support should be applied to all students with disabilities.**

Misinterpretation of IDEA rules re “exiting” school: The Workforce Innovation Technical Assistance Center (WINTAC) is the technical assistance center funded by RSA that responds to questions and provides information on the WIOA under the direction and/or guidance of RSA. In the WINTAC FAQ #26³³, the response to a question regarding eligibility for Pre-ETS the summer after high school does not align with IDEA.

This technical assistance document gives the impression that a student with ID who has completed 12th grade would have “exited” high school and therefore would not be considered a “student” eligible for Pre-ETS the summer after 12th grade, if the student has not already been accepted into a postsecondary program. On the contrary, under IDEA, a student with a disability has not “exited” until the student receives a regular high school diploma or “aged out” of services (reached the maximum age limit in their state).

Minimal Technical Assistance on Required CTP counseling: As stated above, one of the five Pre-ETS services required to be made available is counseling for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education. The Collaboration to Promote Self-Determination, and other disability organizations, strongly urged Congress to include counseling about Comprehensive Transition Programs in WIOA and Congress did so. However, the WINTAC technical assistance document on this counseling³⁴ includes only one (inaccurate) line describing CTPs buried deep in the document, stating that they are:

- Post-Secondary programs at community colleges and universities for students with intellectual and developmental disabilities.

Actually, Comprehensive Transition Programs are for students with intellectual disability at *any* Institution of Higher Education, not just community colleges and universities. These programs are for students with ID, not developmental disability, unless the student also has an ID. Most importantly, there is no information about CTPs, what they are, that students do not need a regular high school diploma in order to enroll in CTPs, and no link to the financial aid information on the Department website, etc. Furthermore, there is no information about resources and no link to the National Coordinating Center, the federally-funded technical assistance center.

SUMMARY AND RECOMMENDATIONS:

Issues discussed in this policy document have great relevance to the success of students with intellectual disability in inclusive postsecondary programs. A recent consensus study report by the National Academies of Science, Engineering and

³³ <http://www.wintac.org/topic-areas/pre-employment-transition-services/faqs#q26>

³⁴ <http://www.wintac.org/topic-areas/pre-employment-transition-services/overview/counseling-opportunities-enrollment>

Medicine³⁵ stated: “A life course perspective posits that health and disability develop over time, shaped continuously by events and environmental factors as the child grows and develops. During childhood, there are certain critical points of transition wherein trajectories may be particularly impacted, including the young child’s transition from preschool to school and, of particular salience to this report, the transition from high school to postsecondary education and/or the workforce. (Halfon and Forrest, 2017)”. This is a profoundly important concept; it is a *person* with an intellectual disability who traverses the complex and fragmented system of supports and services over time. The real child becomes a real adolescent who then becomes a real adult. The focus must always remain on the individual and the long-term life goals desired by and for that individual whether one is making disability law or policy or designing and implementing disability services and supports. The effects of non-aligned or poorly aligned services disrupt a *person* and the effects may last for a lifetime.

The policy tangle addressed in this document is the result of implementation issues leading to misalignment between IDEA, WIOA, and HEOA that can and should be addressed through agency guidance. **Regulatory and legislative changes are not needed.**

The Inclusive Higher Education (IHE) Committee recommends that the Department of Education take the following actions:

- 1. Issue new guidance that accurately reflects the intent of Congress in HEOA, IDEA, and WIOA, and aligns with the original Department interpretation of IDEA and WIOA as clearly stated in the regulations preamble language for both statutes. This will ensure that students with intellectual disability receive the support they need to enroll and succeed in postsecondary education and subsequently obtain successful employment outcomes.**
- 2. Clearly state in new guidance that IDEA Part B funds may be used to support students still eligible for IDEA in postsecondary and community-based settings.**
- 3. Clearly state in new guidance that VR funds can be used to support students with intellectual disability in postsecondary education programs.**
- 4. Clearly state in the guidance that students with intellectual disability in postsecondary programs meet the WIOA definition of “student with a disability” if the student meets the age requirements.**

³⁵ National Academies of Sciences, Engineering, and Medicine. (2018). *Opportunities for improving programs and services for children with disabilities*. Washington, D.C.: The National Academies Press, p. 7.

- 5. Follow-up with states which are denying services to students with ID based on a mistaken interpretation of the RSA TAC to inform these states about the new guidance.**
- 6. Require WINTAC to correct inaccurate or incomplete documents, including those related to students “exiting” high school and the document regarding counseling on CTPs.**
- 7. Share information about the new guidance widely.**

ABOUT THE AUTHORS

Stephanie Smith Lee is the Senior Policy Advisor for the National Down Syndrome Congress and Chairs the National Coordinating Center Accreditation Workgroup. She has over thirty-five years of experience in public policy, including senior Congressional staff positions. Since her daughter, Laura, was born with Down syndrome in 1982, she has led successful disability advocacy efforts at the local, state, and Federal levels. As the Director of the US Office of Special Education Programs, she was responsible for the implementation of IDEA, the Federal special education law. As Senior Policy Advisor for the National Down Syndrome Society, she developed an effective grassroots, advocated with Congress and directed the Riggio Transition and Postsecondary Project, a ten year strategic initiative to expand inclusive postsecondary education opportunities for people with intellectual disability (ID). This included successfully advocating for national research and technical assistance projects in the US Department of Education and the developing inclusive postsecondary projects and state-wide initiatives in various states. As Chair of the Inclusive Higher Education Committee, which she now Co-Chairs, Ms. Lee led the successful effort to amend the Higher Education Act to obtain federal financial aid and model demonstration programs for students with ID.

Denise Rozell is the Director of Policy Innovation at AUCD working primarily on issues affecting youth in post-secondary education, transition, employment and independent living. Denise has twenty-five years of experience in disability policy at the federal and state level working on almost all issues and legislation affecting individuals with disabilities beginning with the Americans with Disabilities Act. Before joining AUCD, Denise spent 15 years as the Assistant Vice President for State Government Relations at Easter Seals as the primary resource to Easter Seals 75 affiliates in building capacity to increase awareness of and support for disability issues in state government. Denise holds a bachelor's degree in political science from Occidental College in Los Angeles and a juris doctorate from Boalt Hall School of Law at the University of California in Berkeley.

Madeleine Will has been a leading advocate for several decades at the local, state and national levels to improve services for children and adults with disabilities. In the 1980's, Mrs. Will served in the Reagan Administration as Assistant Secretary of the Office of Special Education and Rehabilitation Services (OSERS) in the U.S. Department of Education (DOE). During this period, OSERS created transition programs, which led to amendments to the Individuals with Disabilities Education Act (IDEA), and developed national programs of supported employment and classroom inclusion of students with disabilities. She also served for four years as Chairperson of the President's Committee for People with Intellectual Disabilities (PCPID) in the George W. Bush Administration. For over nine years, she was Vice President of Public Policy and Director of the National Public Policy Center for the National Down Syndrome Society (NDSS), a disability organization made up of over 190 affiliates across the country. As director of the Public Policy Center, she helped

lead and support a multi-year effort to seek the passage of the Stephen H. Beck Achieving a Better Life Experience (ABLE) Act of 2014, which now allows individuals with disabilities and their families to create a tax-advantaged savings account to help pay for disability-related expenses across the lifespan. Will also helped develop and supervise the Riggio Transition and Postsecondary Project, a multi-year strategic initiative that led to the creation of numerous postsecondary programs and to the passage of legislation which provided students with intellectual disabilities access to financial aid and to Congressional appropriations for model demonstrations. More recently, she co-founded an advocacy coalition, the Collaboration to Promote Self-Determination (CPSD), that seeks to bring about the modernization and alignment of supports for adults with disabilities so that they can work, earn, save and live the best possible life in the community.

APPENDIX

Appendix A: Inclusive Higher Education Committee Membership List

Appendix B: Statutory Definitions and Requirements

Appendix C: U.S. Department of Education, Office of Special Education and Rehabilitative Services Letter to W. Kelly Dude

Appendix D: North Carolina Department of Health and Human Services, Division of Vocational Rehabilitation Letter

Appendix A: Inclusive Higher Education Committee Membership List

Inclusive Higher Education Committee

Membership List

The Committee, (formerly Experts Workgroup) has been working since 2006 to provide technical assistance to Congress, the Administration, and the field regarding postsecondary education and students with intellectual disabilities, and to promote improved opportunities and funding. It is made up of experts with diverse experiences and backgrounds. Recommendations of the committee reflect the individual viewpoints of these experts, and not necessarily the organizations and institutions with which members are affiliated.

Stephanie Smith Lee, Committee Co-Chair
Senior Policy Advisor, National Down Syndrome Congress

Kim Musheno, Committee Co-Chair
Vice President of Public Policy, Autism Society of America

Denise Rozell, Committee Co-Chair
Director of Policy Innovation, Association of University Centers on Disabilities

Michael Behrmann, Ed.D., Professor *Emeritus*, George Mason University

Bud Buckout, Director, Associate Director Taishoff Center/Director of Inclusive U,
Syracuse University

Steve Eidelman, MSW, MBA, Kennedy Foundation

Heidi Graff, Ph.D., Director, Mason LIFE Program George Mason University

Meg Grigal, Ph.D., Co-Director, Think College, Senior Research Fellow, Institute for
Community Inclusion University of Massachusetts Boston

Debra Hart, M.S., Director, Think College, Institute for Community Inclusion University
of Massachusetts Boston

Ashley G. Helsing, Director of Government Relations, National Down Syndrome Society

Laura Kaloi, Policy Advisor, Council of Parent Attorneys and Advocates, Inc

Denise Marshall, Executive Director, Council of Parent Attorneys and Advocates, Inc.

Elise McMillan, JD, Co-Director Vanderbilt Kennedy Center For Excellence in
Developmental Disabilities

Director of Community Engagement and Public Policy
Senior Associate, VUMC Department of Psychiatry

Olivia Raynor, Ph.D.
Director, Tarjan Center at UCLA, Adjunct Professor, Department of Psychiatry and
Biobehavioral Sciences, University of California Los Angeles

Jeff Ross, Executive Director, First Place Phoenix

Heather Sachs, Policy & Advocacy Director, National Down Syndrome Congress

Sara Jo Soldovieri, Manager of Inclusive Education Programming, National Down
Syndrome Society

Cathryn Weir, Program Director, Institute for Community Inclusion, University of
Massachusetts Boston

Jane West, Ph.D., Education Policy Consultant
Visiting Professor, University of Maryland

Madeleine Will, MA, Co-Founder, Coalition to Promote Self-Determination

Appendix B: Statutory Definitions and Requirements

Higher Education Opportunity Act (HEOA) definitions:

The term "**student with an intellectual disability**" means a student-

(A) with a cognitive impairment, characterized by significant limitations in-

(i) intellectual and cognitive functioning; and

(ii) adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(B) who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]. (20 U.S.C. §1140 (2))

The term "**comprehensive transition and postsecondary program for students with intellectual disabilities**" means a degree, certificate, or nondegree program that meets each of the following:

(A) Is offered by an institution of higher education.

(B) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment.

(C) Includes an advising and curriculum structure.

(D) Requires students with intellectual disabilities to participate on not less than a half-time basis as determined by the institution, with such participation focusing on academic components, and occurring through 1 or more of the following activities:

(i) Regular enrollment in credit-bearing courses with nondisabled students offered by the institution.

(ii) Auditing or participating in courses with nondisabled students offered by the institution for which the student does not receive regular academic credit.

(iii) Enrollment in noncredit-bearing, nondegree courses with nondisabled students.

(iv) Participation in internships or work-based training in settings with nondisabled individuals.

(E) Requires students with intellectual disabilities to be socially and academically integrated with non-disabled students to the maximum extent possible.

(20 U.S.C. §1140 (1))

Workforce Innovation Opportunity Act (WIOA) Definitions and Requirements

WIOA definitions:

“The term "***recognized postsecondary credential***" means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an

associate or baccalaureate degree.” (Work Force Innovation and Opportunity Act of 2014, Pub. L, 113-128; 29 U.S.C. Sec 3101, et seq.)

"Student with a Disability" – means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who -

- (A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or (2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and
- (B)(1) Is not older than 21 years of age; or (2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and
- (C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or (2) Is a student who is an individual with a disability, for purposes of section 504. (Authority: Sections 7(37) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37) and 709(c))

WIOA Requirements Regarding Use of Pre-ETS Funds

Section 113 Provision of Pre-Employment Transition Services

(a) IN GENERAL.- From the funds reserved under section 110(d), and any funds made available from State, local, or private funding sources, each State shall ensure that the designated State unit, in collaboration with the local educational agencies involved, shall provide, or arrange for the provision of, **pre-employment transition services** for all students with disabilities in need of such services who are eligible or potentially eligible for services under this title.

(b) REQUIRED ACTIVITIES .- Funds available under subsection (a) shall be used to make available to students with disabilities described in subsection (a) -

- (1)** job exploration counseling;
- (2)** work-based learning experiences, which may include in school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment to the maximum extent possible;
- (3)** counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- (4)** workplace readiness training to develop social skills and independent living; and
- (5)** instruction in self-advocacy, which may include peer mentoring.

Appendix C: U.S. Department of Education, Office of Special Education and Rehabilitative Services Letter to W. Kelly Dude



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 3, 2013

W. Kelly Dude
Anderson, Dude & Lebel, P.C.
Attorneys at Law
Plaza of the Rockies North
111 South Tejon, Suite 400
Colorado Springs, Colorado 80902

Dear Mr. Dude:

This is in response to your letter to the Office of Special Education Programs (OSEP), written on behalf of “several school districts in the Pike’s Peak region of Colorado,” requesting clarification regarding the secondary transition requirements in Part B of the Individuals with Disabilities Education Act (IDEA or Part B). In general, your questions relate to whether services at postsecondary institutions can be provided as part of a student’s transition services identified in the student’s individualized education program (IEP) under 34 CFR §300.320(b). I apologize for the delay in responding.

Ensuring that all students, including students with disabilities, have the skills and knowledge necessary to succeed in college and the workforce will require higher standards of educational excellence. The Department is committed to ensuring that all students have the resources and supports needed for success in college and in a competitive workforce including the opportunity to enroll in educational programs that develop necessary knowledge and skills. OSEP believes that providing a high school student with a disability the opportunity to take one or more courses at a community college or other postsecondary institution prior to high school graduation can be critical in facilitating the student’s transition from secondary school to college or the workforce. This letter will address how participation in courses at a postsecondary institution can occur consistent with Part B of IDEA.

If under State law, attending classes at a postsecondary institution, whether auditing or for credit, is considered secondary school education for students in grade 12 or below and the education provided meets applicable State standards, those services can be designated as transition services on a student’s IEP and paid for with IDEA

Part B funds, consistent with the student's entitlement to a free appropriate public education (FAPE).¹

See the definitions of FAPE at 34 CFR §300.17 and secondary school at 34 CFR §300.36.² If a State does not consider attendance at a postsecondary institution as part of secondary school education, Part B funds may not be used to pay for the services. However, the State may elect to use State and local funds to provide or pay for services for a student with a disability that would be in addition to those special education and related services required under IDEA. In these situations, as discussed below, IDEA does not prohibit a State or school district from choosing to include those additional services in a student's IEP.

Your specific questions and OSEP's responses follow.

Question 1: Does the IDEA require that school districts include language in a transition plan indicating that a student shall have access to attend a junior college, college or university (hereafter collectively "postsecondary") upon the student's or parents' request? In a related issue, on what basis can a school district determine that such a student cannot reasonably benefit from attending post-secondary schools?

OSEP's Response: As you know, transition services must be a part of a student's IEP beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger, if determined appropriate by the IEP Team. 34 CFR §300.320(b). The term *transition services* is defined by 34 CFR §300.43 as follows:

¹ There are, however, exceptions to FAPE for certain ages in 34 CFR §300.102. Students with disabilities who have graduated from high school with a regular high school diploma are not entitled to FAPE. The IEP Team for a student who has not graduated from high school with a regular high school diploma has the full range of options available to provide FAPE, including providing appropriate transition services "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." 34 CFR §300.43.

² Under 34 CFR §300.17, FAPE means special education and related services that—(a) are provide at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. Under 34 CFR §300.36, secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

- (a) 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;
 - (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.

Decisions related to the specific content of postsecondary goals and transition services are the responsibility of the IEP Team, the required members of which are identified in 34 CFR §300.321(a) and (b). The parent and the student are required IEP Team members at IEP Team meetings where transition services and postsecondary goals are discussed. The IEP Team must consider the student's needs, taking into account the student's strengths, preferences and interests. 34 CFR §§300.320(b)(2) and 300.43(a)(2). The IEP Team is required by 34 CFR §300.324(a)(ii) to consider "the concerns of the parent for enhancing the education of their child;" however, the IEP Team is not required to include a particular transition service or services in a student's IEP based solely on a parent's or student's request.

The IDEA does not specify criteria for determining whether a student would or would not "reasonably benefit"³ from specific transition services. The IEP requirements in 34 CFR §300.320(b) for "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills" should inform the IEP Team's decisions regarding

³ OSEP interprets "reasonably benefit" to mean that the child's IEP, including transition services where appropriate, is reasonably calculated to enable the child to receive educational benefit. See Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).

“transition services (including courses of study) needed to assist the child in reaching those goals.” If the IEP Team determines that services in a community, technical, or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE, and those services are considered secondary school education as discussed above, the student’s IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part B funds.

If attendance at postsecondary classes cannot be supported with IDEA Part B funds, as noted above, a State may elect to use State and local funds to provide or pay for those services. OSEP recognizes that school districts and students and parents may wish to use the IEP as the vehicle to document that the child is receiving services at a postsecondary institution that cannot be paid for with Part B funds as a transition service. However, there is no IDEA requirement to include additional information in a child’s IEP beyond what is explicitly required in section 614 of the Act. See 34 CFR §300.320(d)(1). Thus, if a State provides or pays for transition services on college campuses with State or local funds and wishes to require that the child’s IEP include those services, consistent with section 608(b) of IDEA, it must inform local educational agencies in the State and the Department in writing that this is a State-imposed requirement that is not required by Part B of the Act. See 34 CFR §300.199(a)(2).

Question 2: If a special education student with a transition plan attends a postsecondary institution, either auditing or taking one or more classes for credit, is the school district obligated to provide, and pay for, transportation, tuition and/or a paraprofessional to attend classes with the student?

OSEP’s Response: In general, IDEA requires that the special education and related services provided to a student under his or her IEP, including the transition services identified in the student’s IEP, must be provided at public expense and at no cost to the parents. 34 CFR §§300.101 and 300.17. Whether the school district is obligated to provide, and pay for, transportation, tuition and/or a paraprofessional to attend classes with the student is a determination that must be made on an individual, case-by-case basis by the student’s IEP Team.

Question 3: If a special education student with a transition plan who is attending a post-secondary institution wants to experience living in a dormitory, what obligation, if any does a school district have to provide a paraprofessional on site at the dormitory, and does a school district have an obligation to pay for the cost of the room and board?

OSEP’s Response: Unless this experience is being provided to carry out a postsecondary goal included by the IEP Team on the student’s IEP as part of

the student's transition services and is considered secondary school education as described above, the LEA is under no obligation to provide, or pay for, either a paraprofessional or the cost of room and board.

Question 4: If school districts have any of the obligations described above, how would these obligations reasonably be imposed on rural school districts that may be located significant distances from a post-secondary institution?

OSEP's Response: Rural school districts have the same obligation as other school districts with respect to developing postsecondary goals and providing transition services for a student with a disability. Based on the clarification set out in this letter, if IEP Teams in rural school districts incur additional costs to meet a student's transition services needs, they may seek to use funds reserved for State-level activities for the "development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities." See 34 CFR §300.704(b)(4)(vi).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Robert MacGillivray, the OSEP State contact for Colorado, at 202-245-7433 or by email at Robert.MacGillivray@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with the first name "Melody" and last name "Musgrove" clearly distinguishable.

Melody Musgrove, Ed.D.
Director
Office of Special Education

Programs

cc: State Director of Special Education

**Appendix D: North Carolina Department of Health and Human Services,
Division of Vocational Rehabilitation Letter (see next page)**



NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF VOCATIONAL REHABILITATION SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

CLAUDIA B. HORN, M.S.
SENIOR DIRECTOR

TARA K. MYERS
DIVISION DIRECTOR

TO: Postsecondary Education Stakeholders

FROM: Tara Myers, Division Director

DATE: July 3, 2017

REASON: Classification of *Student with a Disability* in Postsecondary Education Programs

The NC Division of Vocational Rehabilitation (NCDVR) would like to make you aware of new information resulting from consultation and formal technical assistance regarding the Workforce Innovation and Opportunity Act, namely the Title IV mandate for VR agencies to allocate 15% of federal funds towards the provision of pre-employment transition services to *students with disabilities*. The Department of Education's draft proposed rules in April 2015 and the final rules released in June 2016 included varying definitions for *student with a disability*, which has resulted in much conversation and consultation between VR agencies and the Rehabilitation Services Administration (RSA) on this topic.

According to 34 CFR 361.5(c)(51), for the state of NC, a student with a disability is:

- An individual with a disability in a secondary, postsecondary, or other recognized education program
- Who is not younger than 14 (the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)), AND
- Who is not older than 21 (the maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)), AND
- Who is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) OR is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act.

In early April, at the spring conference of the Council of State Administrators of Vocational Rehabilitation, RSA provided specific guidance on the classification of individuals enrolled in a variety of postsecondary educational programs in terms of whether these individuals would be considered *students with disabilities*. RSA advised that *postsecondary or other recognized educational programs* are those programs which will result in a *recognized postsecondary credential*. RSA directed VR agencies to a technical assistance circular (RSA-TAC-17-01) containing definitions and policies related to performance accountability for details on what may be considered a recognized postsecondary credential.

The TAC indicates that a *recognized postsecondary credential* consists "of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree, as well as graduate degrees for the purposes of the VR program as required by section 103(a)(5) of the Rehabilitation Act of 1973, as amended by title IV of WIOA. A recognized postsecondary credential is awarded in recognition of an individual's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation. These technical or industry/occupational skills generally are based on standards developed or endorsed by employers or industry associations. Neither certificates awarded by workforce development boards (WDBs), nor work readiness certificates, are included in this definition because neither type of certificate documents the measurable technical or industry/occupational skills necessary to gain employment or advance within an occupation. Likewise, such certificates must recognize technology or industry/occupational skills for the specific industry/occupation rather than general skills related to safety, hygiene, etc., even if such general skills certificates are broadly required to qualify for entry-level employment or advancement in employment."

Based on the direction of RSA, NCDVR will immediately apply the definition above when determining whether an individual enrolled in postsecondary educational programs can be considered a *student with a disability* who may access pre-employment transition services funded out of the 15% reserve.

If you have questions about classification of individuals enrolled in your program(s) or the impact to accessing NCDVR pre-employment transition services or other VR grant funds, you may contact the Program Specialist for Transition Services at 919-855-3576 or stephanie.hanes@dhhs.nc.gov.

