

**COOPERATIVE AGREEMENT BETWEEN
THE WEST VIRGINIA DEPARTMENT OF EDUCATION AND
THE WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

PREAMBLE

This agreement is designed to improve the cooperative and collaborative efforts between the West Virginia Department of Education (hereinafter "WVDE") and the West Virginia Division of Rehabilitation Services (hereinafter "Rehabilitation") for the purpose of more effective and efficient service delivery to West Virginia students with disabilities. The cooperative agreement shall assure that each student with a disability in the state who needs special education and/or vocational rehabilitation services is promptly identified, and the appropriate transition and pre-employment transition services are made available to the individual.

AUTHORITY

Public Law 108-446, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), mandates that the state and local education agencies provide a free appropriate public education (FAPE), which includes special education and related services in the least restrictive environment to meet their (students') unique special education needs, and extends participation of related educational services and other public entities in the development of Individualized Education Programs (IEP) and transition services. The Workforce Innovation and Opportunity Act (WIOA) of 2014 calls for Rehabilitation to continue the development of cooperative relationships with school systems in serving the vocational needs of eligible students with IEPs, students with 504 plans, and other students with disabilities not currently receiving services, including the delivery of transition and preemployment transition services. Each party will respect the importance of the legal responsibilities of the other, as appropriate.

DETERMINATION OF AGENCY RESPONSIBILITY

WVDE, through participation in IDEA 2004, has assured the United States Department of Education (USDE) that it has established general supervisory authority over all education programs administered within the State. General supervisory authority means that:

1. All programs serving eligible students meet all requirements of IDEA 2004;
2. All programs serving eligible students within the state must meet State standards; and
3. Funds which support services to eligible school age students with disabilities, including state and local education funds and funds under Title V, Title VI, Title IX, and Title XX of the Social Security Act, will continue to provide any and all services provided by these funds prior to the passage of IDEA 2004; and no program will alter eligibility requirements for participating in federal, state, and local programs in order to increase the financial responsibility of agencies receiving IDEA 2004 funds. Part B of IDEA does not limit the responsibility of agencies other than educational agencies

for providing for and paying for some or all of the costs of FAPE to students with disabilities in the State.

WVDE has responsibility for ensuring that appropriate special education and related services are provided for each eligible student with a disability, ages 3 to 21, enrolled in the public school system. For each eligible student with a disability at age 14 or younger, if determined appropriate, the transition service needs of the student must be identified, including interagency linkages. Students with disabilities shall have equal access to services that are normally provided by public schools for non-disabled individuals, provided that reasonable accommodations or modifications can be made.

Transition services are defined in IDEA 2004 as a coordinated set of activities for a student with an exceptionality that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities including post-secondary education; vocational education; competitive, integrated employment; continuing and adult education; adult services; independent living or community participation.

Rehabilitation is mandated by WIOA, in collaboration with local education agencies (LEAs), including the county-level Boards of Education in each of West Virginia's 55 counties, and all public charter schools, to provide or arrange for the provision of pre-employment transition services to students with disabilities (ages 14 through the end of the school year in which the student turns 21) in need of such services who are eligible or potentially eligible for Rehabilitation services--specifically, those students with an IEP and those students with a disability for the purposes of section 504. The five required pre-employment transition service activities are: 1) job exploration counseling; 2) work-based learning experiences; 3) counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education; 4) workplace readiness training; and 5) instruction in self-advocacy. These services may be provided directly by Rehabilitation staff, school personnel, and/or through Rehabilitation-acknowledged vendors. Pre-employment transition services may be provided in a group or individual setting.

Rehabilitation is required to conduct, at a local level, a Comprehensive Statewide Needs Assessment (CSNA) to determine the need for the five required pre-employment transition service activities. The CSNA will be used to determine: 1) the level of need for each of the required pre-employment transition service activities, statewide; 2) the amount of service provision delivered by the education system regarding these five required activities; and 3) the amount of service gap that remains for Rehabilitation to provide. If the student needs, wants, or requests one or more of the five required Pre-ETS services that have not already been provided as a transition service under IDEA by the local education agency, Rehabilitation will provide or arrange for the provision of those services. Students must submit a referral request or application for Rehabilitation services prior to provision of Pre-ETS.

For students with disabilities, the responsibility for vocational rehabilitation services rests with Rehabilitation. Rehabilitation will provide services, which are legally the responsibility of Rehabilitation, for those individuals determined to be eligible for Rehabilitation services.

Eligibility for Rehabilitation services is determined by the following criteria:

- An individual must have a permanent physical or mental impairment which, for that individual, constitutes or results in a substantial impediment for employment; and
- The individual can benefit in terms of a competitive integrated employment outcome from vocational rehabilitation services.

TRANSITION AND PRE-EMPLOYMENT TRANSITION SERVICES PLANNING

It is important that WVDE and Rehabilitation work together to determine logistics for providing transition and pre-employment transition services. The IEP and the Individualized Plan for Employment (IPE) must be developed with coordinated goals, objectives, and planned services for effective and successful transition to post-school settings. Each agency will cooperate to provide referral, support, relevant documentation, and assistance to the agency with responsibility for services.

IDEA 2004 and WIOA require the individual's participation in the development of the IEP and IPE, respectively, and emphasize informed choice. Identification of transition services for the IEP is focused on a coordinated set of activities which considers the student's preferences and interests. Likewise, the IPE is developed by a rehabilitation counselor and the individual by identifying goals through reviewing assessments, individual strengths, resources, interests, and needs. WVDE and Rehabilitation provide both awareness and exploration activities in the areas of living, learning, and work to support decisions about post school outcomes. This interagency cooperation assures the provision of transition and pre-employment transition services that prepare the student to pursue adult goals.

The participation of Rehabilitation counselors, or other Rehabilitation staff, as appropriate, in the IEP process will help students and parents understand the differences in and facilitate the provision of educational and rehabilitation services. To this end, Rehabilitation staff should be invited to IEP meetings, when appropriate, to provide information on available services and eligibility requirements. The Rehabilitation counselor may also assist in the development and coordination between the IEP and the IPE. Both WVDE and Rehabilitation should document any coordinated services outlined in both the IEP and the IPE. Planning, coordinating, and providing transition and pre-employment transition services for students with disabilities may be conducted at the state and local level to maximize service provision and individual choice.

Professional development activities between WVDE and Rehabilitation, when and where appropriate, shall be provided and facilitated by WVDE and/or Rehabilitation staff,

including participating in topic specific learning events and regional support for transition teams.

OUTREACH AND IDENTIFICATION

Rehabilitation and WVDE will utilize a variety of activities to provide outreach to and identification of students with disabilities who are in need of transition and pre-employment transition services. These activities will be conducted both jointly and individually for students with IEPs, students with 504 plans, and other potentially eligible students with disabilities not currently receiving services. Activities may include, but are not limited to, participation in career/job fairs, presentations to students and parents, website links, brochures, surveys, conferencing between Rehabilitation staff and School Counselors, and regularly scheduled contact with individual schools.

Outreach activities and student identification will be conducted as early as possible, preferably no later than the students' 10th grade year and shall include information regarding (1) the purpose of the Rehabilitation program; (2) the eligibility requirements of the Rehabilitation program; (3) the application procedures of the Rehabilitation program; and (4) the scope of services that may be provided by the Rehabilitation program.

FINANCIAL RESPONSIBILITY OF WVDE

WVDE assumes responsibility for all expenses incurred in the provision of special education and related services to achieve FAPE when those services, including assistive technology devices and services, are necessary for the student's educational program or course of study, as well as participation in school activities and during the pendency of any interagency dispute.

Private Insurance Funds: With regard to services required to provide FAPE to an eligible student under this part, WVDE may access a parent's private insurance only if the parent provides informed consent consistent with federal regulations pursuant to IDEA 2004. Each time WVDE proposes to access the parent's private insurance, it must:

1. Obtain written parental consent; and
2. Inform the parent that their refusal to permit the school district to access the private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost.

Public Insurance Funds: WVDE may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required. With regard to services required to provide FAPE to an eligible student under this part, WVDE may not:

1. Require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under IDEA regulations;

2. Require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay included in filing a claim for services provided pursuant to this part, but may pay the cost that the parent otherwise would be required to pay; and
3. Use a student's benefits under a public benefits or insurance program if that use would (a) decrease available lifetime coverage or any other insured benefit; (b) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school; (c) increase premiums or lead to the discontinuation of benefits or insurance; or (d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

To access a student's public insurance (e.g., Medicaid reimbursement), the school district must obtain and maintain documentation of parent/adult student consent specifying the records to be disclosed, the services to be provided, and the extent, frequency and duration of the services. The school district must also obtain parent/adult student consent if billable services (i.e., type, amount and/or duration) are revised at any time. The parents must be informed that their refusal to consent to the release of information does not relieve the school district of its responsibility to ensure that all services are provided at no cost to the parents.

If WVDE is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parents would incur a cost for a service specified on their child's IEP, the school district may use Part B funds to pay for services to ensure FAPE. To avoid a financial cost to parents who otherwise would consent to use private insurance or public benefits or insurance if the parent would incur a cost, the school district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parents' benefits insurance (e.g., the deductible or co-pay amounts).

Proceeds from public or private insurance will not be treated as program income as pursuant to 34 CFR 580.25(2). If a school district spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions of Part B of IDEA 2004.

FINANCIAL RESPONSIBILITY OF REHABILITATION

Rehabilitation may not supplant or duplicate the responsibility of WVDE. Rehabilitation may be responsible for services that occur outside of the school environment that are vocationally oriented and are specifically intended to prepare students with disabilities to transition into post-secondary training or work, including pre-employment transition services, in accordance with the CSNA. Rehabilitation is not otherwise responsible for payment of any service that has not been directly agreed to during the development of a student's IEP and is not included as a service on a student's IPE for Rehabilitation services. Rehabilitation is not responsible for career development activities that are part of a School to Work initiative within the school

system. The responsibility for implementing the requirements of West Virginia Board of Education Policy 2510 remains with the school system.

The transference to the student of assistive technology devices that have been purchased by an LEA will occur consistent with the surplus equipment policies and regulations in existence within each LEA. After the student has exited the school system, Rehabilitation may reimburse the LEA at a rate in accordance with the surplus equipment policy, dependent upon the student's continued need or desire for the equipment, the condition of the equipment, and its future usefulness.

CONSULTATION AND TECHNICAL ASSISTANCE

Rehabilitation agrees to provide consultation and technical assistance services to WVDE, as well as to LEAS, in order to aid them in the planning for the transition of students with disabilities from school to post-school activities, including pre-employment transition services and other vocational rehabilitation services. Rehabilitation will provide WVDE and LEAs with information, as appropriate, regarding disability awareness, disability etiquette, accommodations and assistive technology, eligibility for Rehabilitation and the application process, vocational rehabilitation services, the availability of community-based services, independent living, competitive integrated employment, and career pathways. Additionally, Rehabilitation will provide consultation and technical assistance to WVDE and LEAs regarding pre-employment transition services including job exploration and labor market information, opportunities for work-based learning experiences, post-secondary enrollment opportunities, workplace readiness training opportunities, and self-advocacy.

Rehabilitation assures that communication with WVDE officials shall be done in the most meaningful and convenient manner possible. To that end, Rehabilitation will provide consultation and technical assistance through a variety of methods, including face-to-face contact, phone calls, e-mail, conference calls, and video conferencing.

CONFIDENTIALITY OF INFORMATION/SHARING OF INFORMATION

Personnel employed by WVDE and Rehabilitation are required to safeguard personally identifiable data, information, and records of students that have been collected or maintained by each agency within the boundaries of the legal constraints of each agency. Communication between agency representatives and the sharing of pertinent educational, vocational, programmatic, and diagnostic information is necessary for cooperative planning. Upon the duly approved cooperative agreements between Rehabilitation and the LEAs, rehabilitation staff assigned as agents to the school system become an integral part of the educational process.

Additionally, Rehabilitation is required by the Federal Rehabilitation Services Administration (RSA), to collect specific information regarding recipients of pre-employment transition services, including data of a personally identifiable nature. To expedite the provision of transition and pre-employment transition services, WVDE and Rehabilitation shall work cooperatively to provide access to confidential information through obtaining written parental or adult student consent prior to referral (i.e., disclosure of

personal information), to release information and records and/or to invite agency personnel to the IEP meeting. ***A written consent from either agency will be honored for the purpose stated.*** A separate consent for the same purpose is not required from the other agency. This provision applies to students with disabilities under IDEA 2004 and all other general education students seeking rehabilitation services, as well as pre-employment transition services. As stated in WIOA, Rehabilitation may use existing information from WVDE in the determination of eligibility for services when appropriate.

SUBMINIMUM WAGE EMPLOYMENT

Section 511 of the WIOA imposes requirements on WVDE and Rehabilitation with regard to youth with disabilities seeking subminimum wage employment. Rehabilitation and WVDE shall work cooperatively to ensure that the individual, before beginning work that is compensated at a subminimum wage, has completed, and produces documentation indicating completion of, each of the following actions:

1. The individual has received pre-employment transition services that are available to the individual under section 113, or transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) such as transition services available to the individual under section 614(d) of that Act (20 U.S.C. 1414(d)).
2. The individual has applied for vocational rehabilitation services under title I, with the result that
 - a. the individual has been found ineligible for such services pursuant to that title and has documentation consistent with section 102(a)(5)(C) regarding the determination of ineligibility; or
 - b. the individual has been determined to be eligible for vocational rehabilitation services;
 - c. the individual has an individualized plan for employment under section 102;
 - d. the individual has been working toward an employment outcome specified in such individualized plan for employment, with appropriate supports and services, including supported employment services, for a reasonable period of time without success; and
 - e. the individual's vocational rehabilitation case is closed; and
 - f. the individual has been provided career counseling, and information and referrals to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment; and
 - g. such counseling and information and referrals are not for employment compensated at a subminimum wage provided by an entity described in this subsection, and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by an entity described in this subsection.

Any student considering subminimum wage employment upon exiting high school should be referred to Rehabilitation. When appropriate, Rehabilitation may request documentation from WVDE for purposes related to this section. Rehabilitation will collect and document the necessary prerequisites, corresponding services, and information (described above) required of individuals (aged 24 and younger) seeking subminimum wage employment. This documentation will be provided to the individual within 45 days after the completion of services, or 90 days if a longer period of time is needed due to extenuating circumstances. Furthermore, this agreement assures, pursuant to 34 CFR 397.31, that Rehabilitation and WVDE agree not to enter into a contract or other arrangement with an entity for purposes of operating a program in which youth with disabilities are employed at subminimum wage.

LOCAL AGREEMENTS

Providing transition and pre-employment transition services to students with disabilities is a complex process requiring numerous services from different agencies. The establishment of interagency agreements promotes the effective, efficient, and economical provision of services. Both WVDE and Rehabilitation will encourage and provide technical assistance toward the establishment of a statement of cooperation between the LEAs and the Rehabilitation District Offices throughout the state. Each local area is encouraged to develop written agreements that clearly address, at the secondary school level, the following issues:

- referral criteria;
- outreach and referral procedures;
- procedures for sharing of information;
- planning for transition services, including joint preparation of the IEP and the IPE;
- planning for the provision of pre-employment transition services;
- IEP Team meeting participation issues; provision of professional development activities between staff of the agencies;
- transfer of assistive technology during transition; and
- other areas where additional cooperation is desired.

Technical assistance in the development of local agreements will be available and provided jointly by Rehabilitation and WVDE.

The responsibility for coordinating the completion of each of the local agreements will fall with the Rehabilitation District Manager for that local area and a designated representative of each LEA, frequently the Administrator of Special Education Programs. Each party will be expected to monitor the appropriateness of the local agreement on an annual basis, to conduct regular reviews of the content of the agreement, and to solicit technical assistance from WVDE or the Division of Rehabilitation for clarification or guidance, if necessary. The local designees responsible for the local agreements will be notified of all changes occurring within the state level agreement in a timely manner to ensure that any revisions resulting from changes in law or regulations may be incorporated into the local agreements.

DISPUTE RESOLUTION

WVDE and Rehabilitation recognize the possibility that during the administration of this agreement, disputes might arise regarding financial responsibility for services to an individual student or group of students. It is mutually recognized that all attempts shall be made to resolve the dispute at the lowest level possible. A local dispute resolution committee will be established for this purpose. It is recognized that a LEA official and/or a local Rehabilitation representative can bring an issue to the dispute resolution committee. If a dispute cannot be resolved at the level of inception (Level I) both parties shall agree to send a written statement of the problem(s) causing the dispute to the designated Coordinator for WVDE and to the Program Supervisor, Education Programs (Rehabilitation), who shall jointly attempt to resolve the dispute (Level II). If the dispute cannot be resolved at that level, the State Director of Special Education (WVDE) shall meet with the Assistant Director of Field Services (Rehabilitation) to resolve the dispute (Level III). Any unresolved disputes at Level III will be referred to the State Superintendent of Schools or designee (WVDE) and the Director of the Division of Rehabilitation Services or designee (Rehabilitation) for final resolution (Level IV). If the State Superintendent of Schools or designee and the Director of the Division of Rehabilitation Services or designee are unable to agree upon a final and binding resolution, the dispute shall be referred to the West Virginia Board of Education and the Cabinet Secretary of Commerce for settlement.



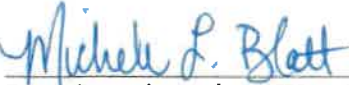

MODIFICATION OF AGREEMENT

Either agency may modify this Agreement upon sixty (60) days written notice to the other agency. The changes must be documented, signed, dated under the conditions agreed upon by ALL of the partners, and attached to the original Agreement. If any provision of the Agreement is held invalid, the remainder of the Agreement will not be affected.

DURATION OF THE AGREEMENT

This Agreement will commence on the date of signature by all parties and shall remain in force and effect subject to annual review and renewal by mutual agreement by all parties, or until the Agreement is modified by the agencies in accordance with the terms set forth herein.

AGREED TO BY:

 <hr/> Director, Division of Rehabilitation Services	 <hr/> Date
 <hr/> State Superintendent, West Virginia Department of Education	 <hr/> Date