

Dear Colleague:

The Departments of Education and Labor have collaborated to promote opportunities for educational placements in the community for students with disabilities while assuring that applicable labor standards protections are strictly observed.

Pursuant to the Individuals with Disabilities Education Act (IDEA), individualized education programs are developed to provide students with disabilities an opportunity to learn about work in realistic settings and thereby help such students in the transition from school to life in the community. Since the affirmation of students' rights to an appropriate free public education in 1975, many students with disabilities have benefited from participation in vocational education programs in their public schools. Students with more severe disabilities, however, have experienced fewer benefits from participation in such programs. Alternative, community-based and individualized education and training programs have emerged to meet their needs.

Our Departments share an interest in promoting educational experiences that can enhance success in school-to-work transition and the prospects that these students become effective, productive, workforce participants and contributors to their community. At the same time, these students must be afforded the full protection of the nation's labor laws and not be subject to potential abuse as they start this transition through community-based educational experiences.

Existing Department of Labor guidelines which define "employees" for purposes of applying the requirements of the Fair Labor Standards Act (FLSA) do not specifically address community-based education programs for students with disabilities. To assist program administrators in developing programs or making placements that do not create questions about the establishment of an employment relationship between the students and participating businesses in the community, the Employment Standards Administration (Department of Labor), and the Offices of Vocational and Adult Education, and Special Education and Rehabilitative Services (Department of Education) have developed the following guidance.

Statement of Principle

The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, or programs providing rehabilitation services to individuals with disabilities.

Guidelines

Where ALL of the following criteria are met the US, Department Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

- *Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.*
- *Participation will be for vocational exploration, assessment, or training in a community-based placement worksite under the general supervision of public school personnel.*
- *Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).*
- *Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.*
- *The activities of the students at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.*
 1. *There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.*
 2. *The students are under continued and direct supervision by either representatives of the school or by employees of the business.*
 3. *Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.*
 4. *The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP*

- *While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:*

<i>Vocational exploration</i>	<i>5 hours per job experienced</i>
<i>Vocational assessment</i>	<i>90 hours per job experienced</i>
<i>Vocational training</i>	<i>20 hours per job experienced</i>

- *Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.*

It is important to understand that an employment relationship will exist unless all of the criteria described in this policy guidance are met. Should an employment relationship be determined to exist, participating businesses can be held responsible for full compliance with FLSA, including the child labor provisions.

Businesses and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

We hope that this guidance will help you achieve success in the development of individualized education programs.

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COMMUNITY-BASED NONPAID VOCATIONAL EXPLORATION, ASSESSMENT & TRAINING AGREEMENT ^[2]

This agreement governs the conditions whereby students with disabilities may receive on- the-job exploration, assessment and/or training while not establishing an employment relationship which would require compliance with the Fair Labor Standard Act.

According to this agreement, _____ agrees to permit
(Business Sponsor)

_____, age _____ to enter its work site for the purpose of
(Student)

receiving community-based vocational exploration, assessment, and/or training for:

(Job Classification)

This training agreement "will serve as a guide to ensure that the student receives opportunities for training in the specific skills for the job activities selected, as well as the vocational and social skills related to the job. Instructional programs have been developed and will be implemented by _____
(IEP Responsible Teacher)

The student will be on site from _____ to _____, on
(starting time) (ending time)

_____.
(days)

All parties agree to abide by the guidelines developed by the U.S. Department of Labor and the U.S. Department of Education for nonpaid vocational training sites to include the following:

- The student participating in this training experience is an individual for whom competitive employment at or above the minimum wage level is not immediately obtainable, and who, because of his/her disability, will need intensive ongoing support to perform in a work setting.
- The student will participate under the general supervision of public school personnel.

- Community-based training will be clearly defined in the student's IEP and will be designed specifically to benefit the student.
- Documentation of student enrollment in the community-based placement program will be made available to the Departments of Labor and Education upon request.
- All parties entering into this agreement realize that participation in this training does not entitle the student to wages.
- The activities of the student at this job site will not result in an immediate advantage to the business. This will include the following:
 1. There has been no displacement of employees; vacant positions have not been filled (by students); employees have not been relieved of assigned duties; and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
 2. The students are under continued and direct supervision by either representatives of the school or by employees of the business.
 3. Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.
 4. The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP. Each component will not exceed the following limitation during anyone school year:

Vocational exploration:	5 hours per job experienced
Vocational assessment:	90 hours per job experienced
Vocational training:	120 hours per job experienced
- Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.
- It is agreed that all students 16 and 17 years old will not be participating in any training activities that have been declared hazardous by the State of Washington (WAC 296.125.033) or the U.S. Department of Labor as outlined in Wage Hours Publication 1330. It is further agreed that the training experience will comply with all Occupational Safety & Health Administration and Washington Industrial Safety & Health Administration regulations.

If any of the above criteria fail to be met during the student's placement, he/she will be withdrawn from the training site.

General Agreements:

- The trainer will be responsible for ensuring that the student follows company policies and regulations that apply to all employees.
- The student agrees to attend vocational training according to the schedule and participate in the instructional program.
- Accident insurance will be provided by a policy carried by the _____ School District for students participating in this program.
- The business sponsor reserves the right to discontinue the training placement at any time. However, if a problem arises, the employer agrees to discuss the situation with the teacher/trainer immediately to identify solutions prior to discontinuing the training experience.

APPROVALS

Business Sponsor (print)
Date

Signature

IEP Responsible Teacher (print)
Date

Signature

Student (print)
Date

Signature

Parent or Guardian (print)
Date

Signature

School Principal (print)
Date

Signature

Student Volunteers

Minimum Medical Coverage^[3]

An employer may opt to provide workers' compensation coverage for student volunteers who are enrolled in kindergarten through twelfth grade in public schools (as defined by RCW 28A.150.010) and who are working as a volunteer under a program authorized by the public school. Student volunteers are still eligible for coverage even if they receive reimbursement for expenses.

This insurance pays only for approved medical care costs that result from an injury or illness that occurred as a result of the student's volunteer activities. It is not intended to provide immunity from a liability claim by a student against an employer. (Liability insurance is provided by the employer's private insurance carrier.)

The premium for this insurance is now less than 4 cents per hour. The premium is paid by the employer for whom the student is volunteering; it cannot be paid by the school (unless the student is volunteering in a school's workplace). L&I's risk classification number for this coverage is 6901-01.

To begin this coverage, employers are required to apply on Labor and Industries form F213-112-000. This form is available on line at <http://www.wa.gov/lni/ipub/i213-112-000.htm> or by calling or visiting any L&I office.

For more information, contact the Department of Labor and Industries.

^[1] Cobb, B., Halloran, W., Simon, M., Norman, M., & Bourexis, P. (1999). Meeting the Needs of Youth with Disabilities: Handbook for implementing community-based vocational education programs according to the Fair Labor Standards Act (2nd ed.). Minneapolis: The National Transition Network.

^[2] Source: Seattle Public Schools

^[3] Source: Department of Labor and Industries