



**Community Based Work and  
Compliance with the Fair Labor  
Standards Act**



Judith L. Imperatore, M.Ed.

Comprehensive Transition Assessments and Functional  
Vocational Evaluation

Expert Witness

Consultation

Training: State, District, Agency

Hybrid Model Transition Services

**413-563-1898**

**transitionresponse@gmail.com**

# Where do we begin?

## §300.43 Transition services

- (a) *Transition services* means a coordinated set of activities for a child with a disability that—
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
  - (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.

# Statement of Principle

- U.S. Departments of Labor and Education
- Memorandum of Understanding
- Recent efforts being made by the Department of Labor

# What is Community-Based Vocational Education (CBVE)?

- ❑ CBVE delivers vocational education and training to students with disabilities in typical community work settings rather than in conventional school environments.
- ❑ Fair Labor Standards Act Training Agreement of 1992

# Federal vs State Law

- ❑ Schools are “named covered entity”
- ❑ Must abide by Federal Law or meet their state guidelines - whichever is the stricter of the two.
- ❑ If your state is “silent” use the stricter rule.

# 64c08

FOH Field Operations Handbook

Chapter 64 Employment of Workers with Disabilities at Special Minimum Wages under Section 14(c)

Section 64c Employment Relationship

**Section 64c08: Students with Disabilities and Workers with Disabilities Who are Enrolled in Individual Rehabilitation Programs**

# Benefit & Value Added & Advantage of Compliance of FLSA 64c08

- Operationalizes CBL
- Legitimacy of your program
- Protects Employer
- Safeguards student
- Supports Best Practices

# Four Components of CBVE

1. Vocational Exploration
2. Vocational Assessment
3. Vocational Training
4. Cooperative Vocational Education

# 7 Point Test

IT'S AN ALL  
OR  
NOTHING  
THING

# 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.

# Employment vs Educational Relationship

## Benefit to the student vs. benefit to the employer

For a community-based vocational experience to be educational in nature, thereby being of benefit to the student, the following instructional practices should be implemented:

- Students receive adequate orientation and instruction before performing new tasks.
- The student's goals and objectives regarding the work experience are clearly stated.
- Activities that take place at the employment site directly relate to these goals and objectives.
- The student's activities are closely monitored and supervised.
- The necessary support and time for students to develop proficiency at new tasks is provided.

# Difference between educational and employment relationships

## Employment relationship:

- Student is providing a service that is of immediate benefit to the employer.
- Student may be completing tasks that are normally performed by employees.
- Student may be performing tasks that are not normally performed by employees but is still of benefit to the employer.

## Educational relationship:

- Student engages in work activities as part of an organized educational program consistent with FLSA guidelines.
- Students should not be performing tasks that a regular employee would perform that are of benefit to the employer.

## Guidelines in Establishing CBVE Site per FLSA

1. Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above minimum wage is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.

## Guidelines in Establishing CBVE Site per FLSA

2. Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.

## Guidelines in Establishing CBVE Site per FLSA

3. Community-based placements will be clearly defined components of IEPs 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 programs components will be included in the student's IEP.

# Guidelines in Establishing CBVE Site per FLSA

4. Information contained in a student's IEP *will not have to be made available to the Dept. of Labor*; 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 upon request. 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.

## Criteria continued....

5. 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:
  - a. 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.
  - b. The students are under continued and direct supervision by either representatives of the school or by employees of the business.
  - c. Such placements are made according to requirement of the student's IEP requirements and not to meet the labor needs of the business.
  - d. The period of time spent by the students at any one site or in any clearly distinguishable job classification is specifically limited by the IEP.

## And more criteria...

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

- a. Vocational Exploration 5 hours per job experience*
- b. Vocational Assessment 90 hours per job experience*
- c. Vocational Training 120 hours per job experience*

## And more criteria...

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

# Documentation Required for CBVE

- An IEP document reflecting vocational instruction and training goals and objectives relevant to the community-based vocational experience(non-specific).
- A letter of agreement outlining the Department of Labor/Department of Education requirements and signed by all participants including the business, the parents/guardians, the school district, and the student.
- Ongoing case notes (e.g., attendance, progress reports, employer evaluations, any other relevant information).

# Non-Confidential Files

- Parent Letter regarding enrollment
  - Work Experience Agreement
  - Field Trip Application
- Overview and Notice of FLSA & CBVE
- CBVE Agreement
- Work Evaluation Form
- Letter to Employers
- Goals, Objectives, Action Statements of Program
- Parent Letter - specifics to the worksite

# Documentation Required for CBVE

## IEP Requirements and CBVE

- The IEP only needs to identify general goals and objectives related to work.
- The IEP might address: the development of work behavior skills, conducting vocational assessments, and training for a specific occupation.
- The IEP should set parameters around the amount of time spent at any one site or in any one job classification.
- Once a training site has been identified for a student, other written agreements that are developed should include the exact location and the nature of the education and training to take place in the site.
- An additional IEP meeting is not usually necessary for multiple vocational explorations, assessments and training if the original IEP goals and objectives are broadly stated.
- Students may receive academic credit for the CBVE experience, but that is left up to the discretion of state and local education agencies.

# Liability

- In non-employment relationships, the worksite is perceived as an extension of the school.
- Students are not eligible for workman's compensation or insurance coverage provided to employees.
- The school is responsible for liability coverage, which is generally the same insurance and liability policy which applies to other off-site school experiences (e.g., athletic events, field trips).

# Supervision

- The student is expected to be closely supervised by school staff or employees of the business.
- Continued and direct supervision is required. Direct supervision can include: one to one instruction, small group instruction, supervision in close proximity, and supervision in frequent, regular intervals
- Students are to be monitored at all times. However, how closely the student needs to be monitored must be determined on an individual basis.

# School Sponsored Work Experiences

## Under FLSA

If a student is participating in work experiences paid or unpaid within the school ALL state and local labor laws must be observed and practiced.

# Caution

IT'S A SLIPPERY SLOPE

[www.dol.gov/whd/specialemployment/workers\\_with\\_disabilities.htm](http://www.dol.gov/whd/specialemployment/workers_with_disabilities.htm)