

## **Memorandum of Understanding**

The Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act require State Educational Agencies/Departments and Vocational Rehabilitation agencies to plan and coordinate transition services, as well as pre-employment transition services (Pre-ETS) for students with disabilities through a formal interagency agreement (Section 612(a)(12) of the IDEA and Section 101(a)(11)(D) of the Rehabilitation Act). Additional references used in this document include Sections 113 and 511 of the Rehabilitation Act, and the Final Rule: State Vocational Rehabilitation Services Program; State Supported Employment Services Program; and Limitations on Use of Subminimum Wage.

This Memorandum of Understanding (MOU) is entered into by the North Dakota Department of Human Services, Division of Vocational Rehabilitation, hereinafter referred to as VR, and the North Dakota Department of Public Instruction, hereinafter referred to as DPI.

### **Purpose**

The purpose of this MOU is to ensure the establishment of a coordinated service delivery system between DPI, local education agencies (LEA), and VR, including:

- Consultation and technical assistance provided to DPI and LEA throughout the state to facilitate the transition of students with disabilities to VR services and the method and means by which the VR agency will provide consultation and technical assistance to the school systems throughout the state;
- Transition planning process to facilitate the development and completion of Individualized Education Programs (IEP) for students with disabilities, including how individualized planning will be coordinated by the VR agency and LEA, with specific duties of the personnel from both agencies;
- Roles and responsibilities of each agency, including financial responsibilities, throughout the student's transition process. A description of which agency has the lead for the provision of each service required for students with disabilities transitioning from school to VR services;
- The procedures for identification of and outreach to students with disabilities who may benefit from transition services; and
- In accordance with 34 CFR 397.31 VR, DPI, and LEA will not enter into a contract or other agreements with an entity for the purpose of operating a program under which a student with a disability is engaged in work compensated at subminimum wage (required in Section 511 of the Rehabilitation Act).

### **Consultation and Technical Assistance**

Joint Responsibility:

- Provide consultation and technical assistance to local VR and LEA either in person or through alternative means, such as conference calls and video conferences;
- Utilize a common message when sharing information to local VR offices and LEA;

- Encourage LEA and VR staff to collaborate through their local Transition Community of Practice in planning and implementing efforts that are focused on the transition of students with disabilities;
- Identify and disseminate information about transition services, employment services, effective practices, training, and funding strategies that create positive employment outcomes to agency staff, partners, families, individuals, and public and private stakeholders;
- DPI and VR are to inform each other and the LEA and VR staff about policies or procedural changes that may impact transition services; and
- Provide technical assistance to identify potentially eligible and VR eligible students.

### **Transition and Pre-Employment Services Planning**

#### Joint Responsibility of VR and DPI:

- Facilitate and coordinate the smooth transition of students with disabilities from school to post-school activities, including the receipt of Pre-ETS, transition services, and other VR services;
- Provide training to LEA and VR counselors to assure transition and pre-employment services training will include activities such as the development and implementation of their IEP under Section 614(d) of the IDEA, coordination on Pre-Employment Services under Section 113, Accommodations under Section 504, and those related to Limitations on Sub-Minimum Wages under Section 511 of the Rehab Act of 1973, as amended;
- Share current research findings and exchange professional literature on an ongoing basis;
- Collaborate on the provision of ongoing joint staff training and cross training of staff to ensure operational activities continue to meet the needs of the parties involved. Part of this training will include a two day transition training/conference every other year, and will be coordinated by the statewide Transition Community of Practice;
- Encourage volunteer employment opportunities and place emphasis on competitive employment opportunities;
- Facilitate the local level engagement of potential employers to provide job shadows, work experience, etc. for students with disabilities;
- Provide training to local level LEA and VR to assure that the Individualized Plan for Employment (IPE) that VR develops for a student with a disability who is receiving special education services should be coordinated with the IEP the LEA develops in terms of the goals, objectives, and services identified;
- Provide training and oversight to assure Transition Plans demonstrate a coordinated set of activities that prevent a break in services for students as they transition; and
- Provide information that will inform students and their parents of the availability of the Client Assistance Program, a dispute resolutions program available to VR clients and participants in rehabilitation programs receiving federal funding.

### VR Responsibility:

- VR Regional Administrators are responsible to ensure VR staff are available to serve students attending the LEA;
- Determine eligibility for VR service and provide rehabilitation services to school-aged students with disabilities when referred by the LEA;
- The IPE should be developed for students who are two years from exiting school, allowing for a smooth transition planning process, at the latest, just before existing school; and
- Because the definition of a “student” with a disability for the VR program includes an individual with a disability for purposes of Section 504 of the Rehabilitation Act, it is broader than the definition under IDEA. VR agencies are authorized to provide transition services to this broader population of students with disabilities than LEA are authorized to provide under IDEA. Since the VR program may serve students with disabilities, including those individuals with a disability for purposes of Section 504 of the Rehabilitation Act, it is possible that these students may not have an IEP under IDEA, and therefore would not be eligible for or receiving special education or related services under IDEA.

### DPI Responsibility:

- DPI will provide training and oversight to the LEAs to assure the following transition requirements of IDEA are followed:
  - DPI will encourage inviting VR to IEP meetings and other team meetings so VR can provide information, technical assistance, case consultation, and information/referral as needed for eligible or potentially eligible students;
  - Provide IEP team-determined transition services;
    - **Transition services** means a coordinated set of activities for a student 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 post-secondary 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:
        - Community experiences;
        - Development of employment and other post-school adult living objectives;
        - Acquisition of daily living skills and provision of a functional vocational evaluation.

## Outreach

### Joint Responsibility of VR and DPI:

- VR and DPI will develop procedures for identification of and outreach to students with disabilities who are in need of transition services, such as information sharing at:
  - IPE meetings
  - Transition planning meetings
  - Back-to-School Nights
  - Transition and Career Fairs
  - Presentations
  - Orientations

### VR Responsibility:

- Inform applicants and eligible students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of VR, through appropriate modes of communication, about the availability of and opportunities to exercise informed choice; including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the VR process;
- Promote outreach to and identification of students with disabilities who are in need of transition services as early as possible during the transition planning process. Outreach to these students will include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirement, application procedures, and scope of services that may be provided to eligible individuals. Outreach activities can include the use of brochures, social media, attendance at back-to-school nights, transition events, etc.
- Provide training to all VR counselors and qualified staff on their role in providing outreach activities to students with disabilities to include those served in special education, served under Section 504, and those served in general education; and
- Outreach activities are not exclusive to students with disabilities in special education, but should include those students with disabilities for purposes of Section 504 of the Rehabilitation Act; students with disabilities receiving school psychological, health, nursing or social work services; and students with disabilities enrolled in an educational program and not in special education. VR agencies may also outreach to youth with disabilities who have dropped out of an education program or students who are at risk of dropping out of high school.

### DPI Responsibility:

- Work with VR to identify students with disabilities for referral to VR; and
- Work with VR to identify referrals and encourage an application for vocational rehabilitation services at least two years before students exit secondary education.

## Coordination

### Joint Responsibility of VR and DPI:

- Coordination of services for students with disabilities;
- Development of the process to document the completion of the required activities under Section 511 for youth who are 24 or younger and seeking subminimum wage, including:
  - Services provided by VR
  - Pre-ETS
  - Career Counseling
  - Information and Referral
  - Transition services provided by the LEA under IDEA
- Design and deliver cross-training sessions to the staff of both parties regarding competitive integrated employment as the preferred vocational outcome for students and youth with disabilities;
- Promote and disseminate information that gives individuals and families resources to envision a future that includes competitive integrated employment;
- VR and DPI will meet regularly with one another and Representatives of LEAs at the North Dakota Secondary Transition Community of Practice to address systems, policy, practice, and funding issues that facilitate or negatively impact the transition of youth with disabilities from school to work or post-secondary education; and
- DPI and VR will align policy and practice at the state level and as much as possible, at the local level, in order to facilitate the seamless transition of youth with disabilities from school to work or post-secondary education, minimize redundant services, and maximize resources in both systems.

### VR Responsibility:

- Services include the provision of Pre-ETS for students who are eligible or potentially eligible for VR services; and
- Assist in the achievement of employment goals for individuals who have applied and been found eligible for VR services.

### DPI Responsibility:

- Request consultation and technical assistance from VR when needed for planning and implementation of transition services;
- Provide all existing educational, medical, psychological, and career assessments through a release of information as necessary for a determination of eligibility by the VR agency;
- Provide special education and related services as developed and documented for students with disabilities in an IEP;
- Provide VR with documentation of completion of transition services or Pre-ETS for students with disabilities;
- Provide representation on the VR State Rehabilitation Council and relevant committee participation; and
- Encourage LEA to identify points of contact for field staff from VR.

## **Financial Responsibility**

### Joint Responsibility of VR and DPI:

- Parties to this MOU commit to the implementation of complementary programs to assist with the provision of transition and Pre-ETS to students with disabilities in the State, including students with the most significant disabilities, to enable them to achieve an employment outcome in competitive integrated employment;
- DPI and VR are financially responsible for the services they provide under their own laws and rules; and
- DPI and LEA are financially responsible for the cost of services it is mandated to provide under IDEA, Part B.

### VR Responsibility:

- Provide outreach to all students with disabilities to make available Pre-ETS:
  - Job exploration counseling;
  - Work-based learning experiences, which may include in-school or after-school opportunities, experiences outside of the traditional school setting, and/or internships;
  - Counseling on opportunities for enrollment in comprehensive transition or post-secondary educational programs;
  - Workplace readiness training to develop social skills and independent living;
  - Instruction in self-advocacy.

### DPI Responsibility:

- Nothing under Title I of the Rehabilitation Act shall be construed as reducing a LEA's obligation under the IDEA to provide or pay for transition services that are also considered special education or related services and that are necessary for ensuring a Free Appropriate Public Education (FAPE) to children with disabilities.

## **Release and Confidentiality of Information**

### Joint Responsibility of VR and DPI:

VR and DPI will agree to comply with the provision of the Workforce Innovation and Opportunity Act (WIOA), The Family Education Rights and Privacy Act (FERPA), and/or other applicable state and/or federal statute or requirement.

- State program use All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the VR program.
  - Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

- In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged:
  - *Release to applicants and eligible individuals* if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.
    - Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.
    - If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by the other agency or organization.
    - An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.
  - *Release to other programs or authorities.* Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.
    - Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.
    - The State unit must release personal information if required by federal law or regulations.
    - The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse unless expressly prohibited by federal or state laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.
    - The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

- (Approved by the Office of Management and Budget under control number 1820-0500) (Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A)) [66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

#### VR Responsibility:

- Cooperate and collaborate in all respects in the performance of this MOU, including sharing individual and service provider information. To the extent that any of such information is confidential pursuant to any federal or state statute or regulation, the party receiving that information shall ensure its continued confidentiality and use of such information only for the purposes set forth in this MOU;
- Protect confidential information and records and shall not release any confidential information or records to any other third party without the express written authorization of the client. Both parties shall comply with state and federal rules, regulations, and laws protecting the confidentiality of information.

The North Dakota Department of Human Services (Department) and its programs are covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule 45 CFR Parts 160 and 164 and is required to follow federal regulations on Confidentiality of Alcohol and Drug Abuse Patient Records at 42 CFR Part 2, as well as state law. The Department and its programs comply with these confidentiality requirements as applicable to records and information that it uses or maintains in connection with this MOU.

#### DPI Responsibility:

- No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information of students without the written consent of their parents to any individual, agency, or organization);
- Consent Parental consent or consent from an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
- Safeguards Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information;
- All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR Part 99, and
- Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## **Accountability, Monitoring, and Reporting**

### Joint Responsibility of VR and DPI:

- Identify staff to be responsible for monitoring and implementing this agreement;
- VR will make available annual participant/client reports to DPI. The report will capture information such as, type of employment services provided, the number of individuals served, service outcomes, wages, and other information pertinent to demonstrate the effectiveness and benefit of services. DPI will make available to VR, "Child Count" data annually.

## **Resolution of Conflict/Enforcement**

VR and DPI encourage coordination and conflict resolution to be addressed at the lowest possible level. If a local resolution cannot be achieved, the local staff members can request intervention from the highest level of VR and DPI. If a solution cannot be reached, or if the solution needs administrative or financial resources beyond the scope of their responsibility, the matter will be referred to the State Superintendent of DPI and the Executive Director of Department in charge of VR, for resolution.

This MOU recognizes that each party has its own administrative mechanisms for the timely resolution of internal disputes and that each party and its respective staff has specific responsibilities and operating procedures governed by applicable federal and state laws, rules, and policies. Further, this MOU shall not be interpreted to limit, supersede, or otherwise affect either party's normal operations or decisions in carrying out its mission.

## **Term/Modification/Termination of MOU**

This MOU shall take effect upon the date of the last signature affixed hereto and will remain in effect for a period of three years. This MOU may be amended or superseded in writing by the mutual consent of the authorized representatives of each Party. This MOU may be terminated by either Party for any reason upon 30-days' written notification transmitted to the agency point of contact. The 30 days will begin on the date the notification is transmitted electronically, or five days following the postmark date, if notification is mailed.

If any provision of the MOU is held invalid, the remainder of the MOU shall remain in full force and effect, so long as the purpose of the MOU can be continued.

## **Point of Contact**

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Barbara Burghart  
Transition Services Program Administrator  
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**Signatures**

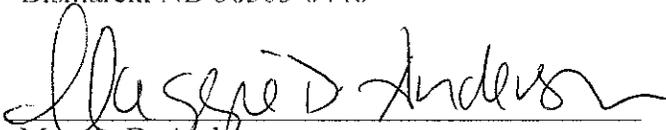
Each Party, by the signature below of its authorized representative, hereby acknowledges that she/he has read this MOU, understands it, and agrees to be bound by its terms.

  
Kirsten Baesler  
State Superintendent  
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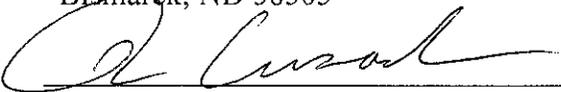
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Date

  
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Date

  
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2/14/17  
Date