



COMMONWEALTH of VIRGINIA
Department of Education

DATE: November 2, 2018

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

SUBJECT: **Special Education Requirements Under the *Workforce Innovations and Opportunity Act* (WIOA)**

This memorandum will address certain school division responsibilities under the *Workforce Innovation and Opportunity Act* (WIOA), a federal law that reauthorized the *Workforce Investment Act of 1998*. In general, it enhances the Virginia Department on Aging and Rehabilitative Services' (DARS) role as a secondary transition partner with school divisions. Through Pre-Employment Transition Services (Pre-ETS), DARS will provide additional supports and services to students with disabilities, and will provide those services at an earlier age. While most provisions of WIOA affect DARS, it does include new requirements for school divisions, in partnership with DARS, as both agencies work to transition students with disabilities from secondary school to postsecondary education, training, and/or integrated competitive employment. Specifically, Section 511 of Title IV of WIOA (i) restricts school divisions from contracting with certain entities and (ii) requires school divisions to maintain and transmit additional documentation in certain instances.

Contracting Limitations

School divisions are prohibited from entering into a contract or other arrangement with any entity that holds a special wage certificate, known as 14(c) under the *Fair Labor Standards Act* for the purpose of paying a subminimum wage to a youth with a disability, aged 14 through 21. School divisions are not prohibited from contracting with such an entity for other purposes, such as providing job coaching or job shadowing.

Record Requirements

If a youth with a disability seeks sub-minimum wage employment, prior to receiving such employment, there must be documentation that the youth was provided transition services by the

school division under the *Individuals with Disabilities Education Act* (IDEA) and/or that the youth was provided Pre-ETS through DARS. In the event the eligible youth or parent/guardian refused services, that must be documented as well.

When requested by DARS, the school division must provide documentation of its completed services or of the refusal of services. The WIOA requires the following documentation:

- A cover sheet that itemizes the documentation;
- Youth's name;
- Description of the service or activity completed or refused within the Individualized Education Program (IEP);
- Name of the provider of the required service;
- Date the service or activity was completed or refused;
- Signature of educational personnel documenting completion/refusal of the required service or activity;
- Date of the signature;
- Signature of the educational personnel transmitting the documentation to DARS; and
- Date and method (e.g., mailed, faxed) by which the document was transmitted to DARS.

In addition, the documentation must be:

- Provided in a way that complies with the confidentiality requirements of the *Family Educational Rights and Privacy Act* (FERPA); and
- Provided as soon as possible after completion of the transition services, but not later than
 - 30 calendar days after completion of the transition services; or
 - 60 calendar days, if additional time is necessary due to extenuating services (such as a lengthy absence due to illness or family circumstances of the educational personnel); and
 - Five calendar days after the refusal to participate.

IMPORTANT NOTE

Nothing in WIOA reduces the responsibilities of the school division to provide transition services under state and federal special education laws and regulations. The Pre-ETS services provided by DARS need to coordinate with other transition services provided by the school division and others, since Pre-ETS is not intended to replace the transition services in the IEP, but, rather, is intended to enhance them.

There are no requirements for students with 504 Plans to receive services under IDEA and special education. Therefore, individual school divisions and DARS will determine the manner in which they will provide Pre-ETS and meet reporting requirements, under WIOA.

If you have questions, please direct them to Patricia Haymes, Director of Dispute Resolutions and Administrative Services, at (804) 786-0116 or email, at Patricia.Haymes@doe.virginia.gov or Marianne Moore, Secondary Transition Specialist, at (804) 225-2700 or email at Marianne.Moore@doe.virginia.gov.

JFL/MM