

Using the Workforce Innovation and Opportunity Act to Improve Employment Outcomes

PEAL's 10th Annual Inclusive
Communities Conference

Ron Hager, NDRN Senior Staff Attorney

March 3, 2016

The Need for vocational rehabilitation (VR) Services

Employment Outcomes for People
with Disabilities

The “Disability Employment Gap”: U.S. Labor Participation Rates (Age 16 and older, non-institutionalized)

Year	In the Labor Force* No Disability	In the Labor Force* Disability	Gap
2012	69.4%	20.6%	48.8%
2013	68.9%	20.3%	48.6%
2014	68.7%	19.5%	49.2%

* Includes those who 1) worked full or part time; 2) were temporarily absent from work due to illness, vacation, a labor dispute, or other reason; and 3) who did not work but were available to work and made specific efforts to find work during the four week period preceding the survey.

Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Labor Force Characteristics based on the Current Population Survey.

Other Employment Related Statistics

(Age 16 and older, non-institutionalized)

The median earnings for individuals with disabilities is **\$6,000 less** than for those without a disability (\$36,400 as compared to \$42,400).

The poverty rate of individuals with disabilities is **16% points higher** than for those without disabilities (28.4% compared with 12.4%).

Source: Cornell University, *2012 Annual Disability Status Report*.

Introduction to the Rehabilitation Act

Statutory History

- Originally passed as Title I of the Rehabilitation Act (Rehab Act) of 1973
- Most recently amended by the Workforce Innovation and Opportunity Act (WIOA), July 22, 2014
- VR provisions went into effect immediately, except Section 511
- No regulations yet, only draft

State VR Programs

- Title I of the Rehab Act is a federally funded grant program
 - States must use the money consistent with the requirements of Title I
 - Every State and Territory has a VR program
- States may have one or two programs
 - One serving people who are legally blind
 - One serving all other people with disabilities
- VR program is part of workforce investment system

Purposes of the VR Program

- Policy of the United States as Adopted by Congress
 - That Individuals with Disabilities be provided the opportunities to obtain **gainful employment** in **INTEGRATED** settings.
 - That Individuals with Disabilities are to be **ACTIVE** and **FULL** partners in the VR process making meaningful and informed choices.
- The goal of the VR program is to help individuals with disabilities “prepare for, secure, retain, *advance* (under WIOA) or regain employment.”

Purposes of the VR Program

- WIOA Update:
 - In addition to the continued emphasis on informed choice, the new law places a **greater emphasis on economic self-sufficiency** for individuals with disabilities.

Phases of the VR Process

- #1 – Application** for VR services.
- #2 – Determination of Eligibility.**
- #3 – Development of the Individualized Plan for Employment (IPE).**
- #4 – Provision of VR Services.**
- #5 – Employment – the ultimate goal! – and Closure of VR Case.**
- #6 – Post-employment services (if applicable).**

Application for VR Services

- Process begins by submitting an application
- VR will look to student/person with a disability, not the parents
- Informed choice applies throughout the process, in consultation with VR counselor
 - What does the client want to do?
 - What services does the client believe are necessary?
 - Who does the client want to provide services?

Eligibility Determination

- Person has a disability
- The disability results in a substantial impediment to employment
 - Does not have to be severe
 - Anyone eligible under Section 504 or IDEA should be eligible
- The person can benefit from VR services to achieve an employment outcome—VR can help them get a job

Ineligibility Determinations

- If an individual meets the other eligibility criteria he or she is presumed to be able to benefit from VR services.
- The state VR agency can overcome this presumption only by showing by “clear and convincing” evidence that the individual could not benefit from VR services.
- This is a VERY high standard, just below “beyond a reasonable doubt” — “a high degree of certainty.”

Ineligibility Determinations

- How is ineligibility determined?
 - Assessment of ability to work through use of **trial work experience**, in realistic work settings, to assess the individuals abilities to work
 - Must provide appropriate supports
 - Job coach
 - Assistive technology (AT)
 - TWEs must be of sufficient variety and sufficient length of time to make determination
 - WIOA: TWEs must encompass several “different” experiences

VR's Increased Role in Transition

- Each VR office must also work with local schools and workforce development programs to ensure VR's appropriate involvement in transition-related activities

VR's Increased Role in Transition

- 15% of each state's public VR funds must now be used “pre-employment transition services”:
 - Job exploration counseling
 - Work-based learning experiences
 - Self-advocacy training
 - Counseling on post-secondary opportunities
- No specific employment goal has to be identified to allow a VR client to participate in transition or pre-transition activities—projected employment goal

Development of the Individualized Plan for Employment (IPE)

- The IPE should be developed “as soon as possible”, but no later than 90 days after the eligibility determination.

WIOA: Clear Definition of “Competitive, Integrated Employment”

- Although used extensively throughout the Rehab Act, this term was never actually defined.
- The optimal employment outcome under WIOA
 - Full or part-time work at minimum wage or higher
 - Wages and benefits similar to those without disabilities performing the same work
 - Fully integrated with co-workers without disabilities
 - Equal opportunities for advancement

WIOA: Clear Definition of “Customized Employment”

- Customized employment is now considered a legitimate employment outcome that can be provided/supported by VR
 - Competitive, integrated employment
 - For an individual with a significant disability
 - Based on an individualized determination of the individual’s “strengths, needs and interests”
 - Designed to meet the specific abilities of the individual and the business needs of the employer
 - Carried out with “flexible strategies”

Changes in the Definition of Supported Employment

- Must be in a competitive, integrated setting
or
- A short-term arrangement in an integrated setting for an individual who is working toward competitive employment
- The standard supported employment services have been **extended from 18 to 24 months** – with an option to increase the time frame

Focus on the Provision of Advanced Training

- Services must be designed to prepare people for more than entry level careers and to enable career advancement
- WIOA--“Encouraging qualified individuals...to pursue advanced training in science, technology, engineering or mathematics... including computer science, medicine, law or business”

Post-Secondary Options for Individuals with Intellectual Disabilities

- The RSA Commissioner can fund technical assistance
 - To enable individuals with intellectual and other individuals with disabilities
 - To participate in post-secondary educational experiences

Assistive Technology and VR

- WIOA--It is appropriate to utilize AT throughout the VR process, including eligibility
- AT definitions, same as IDEA
 - AT Device
 - AT Service

“AT Device” Definition

- Any item, piece of equipment, or product system
- Acquired commercially off the shelf, modified, or customized
- Used to increase, maintain, or improve functional capabilities of individuals with disabilities.

“AT Service” Definition

- Any service that directly assists an individual with a disability in the selection, acquisition, or use of an [AT] device.
- Includes
 - Evaluations to determine the need for a device
 - Customizing or adapting the device for its user
 - Repairs and maintenance
 - Training on how to use the device for person, family, providers

Formal Cooperative Agreements Between VR and Other Agencies

- WIOA requires that VR agencies have formal, cooperative agreements with:
 - The state agency administering the State Medicaid Plan
 - State intellectual and developmental disability agencies
 - State AT Act projects
 - State Educational Agency
- With respect to the delivery of VR services, including long-term or extended services

Section 511: Subminimum Wages

- Effective two years from enactment—July 22, 2016
- No entity who holds a 14(c) certificate may compensate an individual with a disability who is age 24 or younger a “subminimum wage” unless:
 - The individual is **currently** employed by an entity that holds a valid 14(c) certificate, or
 - Before beginning work that is compensated at a subminimum wage provides documentation that they have completed each of the following steps

Section 511: Subminimum Wages

- The individual has received pre-employment transition services
- The individual has applied for Vocational Rehabilitation (VR) services
- The individual has been found **ineligible** for VR services, or
- The individual has been found **eligible** for VR services and has an IPE.
 - He/she has been working toward an employment outcome for “a reasonable period of time” without success
 - and the VR case is closed.

Section 511: Subminimum Wages

- The individual has also been given career counseling and I&R to enable him/her “to explore, discover, experience and attain” competitive, integrated employment and such counseling/referrals are not for subminimum wage employment opportunities.
- These actions should be carried out every 6 months for the first year and every year thereafter for the duration of the subminimum wage employment.

Section 511: Subminimum Wages

- If the individual is a student with a disability, the receipt and completion of the required activities shall be documented by the VR agency or by the appropriate school official responsible for the provision of transition services.
- VR should provide the final documentation showing the completion of the student's pre-employment transition services within a "reasonable time" following its completion.

Section 511: Subminimum Wages

- To continue to employ an individual at a subminimum wage, the entity shall verify completion of the necessary requirements, including review of any relevant documents provided by the individual and the entity shall maintain copies.
- The documentation is subject to review by a representative from the VR agency or from the Department of Labor.

Questions?